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TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

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No. 84

COMMISSIONER OF INTERNAL REVENUE,  
PETITIONER

FELHAM G. WEDGEHOUSE

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ON WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

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PETITION FOR HABEAS CORPUS FILED JUNE 2, 1948

WARRANT GRANTED OCTOBER 11, 1948

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**Petition to Tax Court.**

(Filed November 14, 1944.)

(Cert. Tr., Rec. on Review, pp. 3-22.)

**TAX COURT OF THE UNITED STATES**

**Docket No. 6487**

**PILHAM G. WODEHOUSE,**

**Petitioner,**

**—against—**

**COMMISSIONER OF INTERNAL REVENUE,**

**Respondent.**

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated July 21, 1944, and as a basis of his proceeding, alleges:

1. Petitioner is an individual, a British subject formerly residing at Le Touquet, France, but since June, 1940, in the custody of the German government in territory under the control of the German army, and his present residence is reported to be in Paris. During the years involved herein prior to June, 1940, he was a resident of either England or France.

2. The notice of deficiency, a copy of which, together with the accompanying statement, is attached hereto and marked Exhibit A, was mailed to the petitioner on July 21, 1944.



*Petition to Tax Court.*

3. The taxes in controversy are income taxes for the following years in the following amounts, including penalties:

Year	Deficiency	Penalty	Total
1938	12,220.86	None	12,220.86
1941	2,802.08	None	2,802.08

4. The determination of tax set forth in said notice of deficiency is based on the following errors:

d. The inclusion in gross income of 1923, 1924, 1938, 1940 and 1941 of various non-periodical lump sum payments for literary property.

h. The inclusion in taxpayer's income for the calendar year 1938 of the sum of \$40,250, payments for literary property actually belonging to taxpayer's wife, Ethel Wodelhouse.

i. The inclusion in taxpayer's income for 1938 of payment for the use of literary property outside the United States.

k. The assertion of any deficiency for the year 1938 after the Statute of Limitations for such year had already run.

o. The inclusion in gross income for the year 1941 of \$2,550.50, representing payment for the use of literary property outside the United States, and therefore not taxable.

*Petition to Tax Court.*

5. The facts upon which petitioner relies as a basis of this proceeding are as follows:

a. Petitioner during the years 1923, 1924, 1938, 1940 and 1941 was a non-resident alien not engaged in a trade or business in the United States and having no office or place of business in the United States.

g. During 1938, taxpayer completed two stories entitled "Uncle Fred in the Springtime" and "Code of the Woosters" (formerly "Cow Creamer"). After completion and while outside the United States, he gave one-half interest in each story to his wife, Ethel Wodehouse, prior to the sale or other disposition of each story. Subsequent thereto, the entire copyright in each story was sold to the Curtis Publishing Company, in each case for a lump sum payment of \$40,000, and the latter story was sold as a novel to Doubleday Doran & Company for \$5,000 advance payment. During the period of publication of such stories in the Saturday Evening Post, that magazine circulated to the extent of approximately 6% outside the United States and the sums received were proportionately not taxable. During the taxable year, taxpayer incurred ordinary and necessary expenses of \$753.01 for attorneys' fees and \$400 for traveling expenses to Cannes, France, in connection with his literary work.

h. On or before June 15, 1939, taxpayer by his duly designated agent filed a true and complete return of all his income received from sources within the United States during 1938, in compliance with law. The permissible time for the assertion of any deficiency for the said year 1938 expired long before the mailing of the deficiency notice, Exhibit A, hereto annexed.

*Petition to Tax Court.*

j. During 1941, taxpayer sold to the Curtis Publishing Company the copyright to a story entitled "Money in the Bank" for a lump sum payment of \$42,500. He also sold to Collier's a story entitled "My Year Behind Barbed Wire" for a lump sum payment of \$2,000. During the publication of such stories, the magazines in which they were published were circulated approximately 6% and 4%, respectively, outside the United States and the sums received were to that extent not taxable. During said taxable year, taxpayer incurred ordinary and necessary expenses of \$1,661.82 for attorneys' fees in connection with his literary work.

k. On or before the due dates thereof, taxpayer by his duly designated agent filed true and complete returns of all his known income received from sources within the United States during 1940 and 1941.

WHEREFORE, petitioner prays that this Court may hear the proceeding and determine that there is no deficiency in petitioner's tax liability for 1923, 1924, 1938, 1940 and 1941, and no penalty due for any year, and further determine and allow to petitioner for 1938 a refund of \$1,121.89, for 1940 a refund of \$3,156.32, for 1941 a refund of \$14,290.12, with interest from the respective dates of payment, and that your petitioner may have such other and further relief as may be necessary or proper.

WATSON WASHBURN (sgd.)

WATSON WASHBURN,

Counsel for Petitioner,

36 West 44th Street,

New York 18, N. Y.

(Duly verified by Watson Washburn November 13, 1944.)

## EXHIBIT A, ANNEXED TO PETITION.

## TREASURY DEPARTMENT

INTERNAL REVENUE SERVICE

New York, N. Y.

Jul 21 1944

Mr. Pelham G. Wodehouse  
c/o Perkins, Malone & Washburn  
36 West 44th Street  
New York 18, N. Y.

Dear Sir:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1923, 1924, 1938, 1940 and 1941 discloses a deficiency of \$31,370.85 and \$2,436.10 in penalty for the taxable years ended December 31, 1923 and 1924, as shown in the statement attached. Said deficiency has been assessed under the provisions of the internal revenue laws applicable to jeopardy assessments.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 150 days (not counting Sunday or a legal holiday in the District of Columbia as the 150th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States for a redetermination of the deficiency.

Very truly yours,

JOSEPH D. NUNAN, JR.,

Commissioner,

By C. B. ALLEN

Internal Revenue Agent in Charge.

Enclosure:  
Statement.



*Exhibit A, Annexed to Petition.*

(From Deficiency Letter Dated July 21, 1944  
Annexed to Petition.)

Mr. Pelham G. Wodehouse

Statement

Taxable Year Ended December 31, 1938

## ADJUSTMENTS TO NET INCOME

Net income as disclosed by statutory notice of deficiency dated November 14, 1941	\$42,679.10
Unallowable deduction and additional income	
(a) Income from royalties	40,250.00
Net income adjusted	\$2,929.10

## EXPLANATION OF ADJUSTMENTS

(a) It is held that the amount of \$40,250.00 representing net royalties derived from your literary work and erroneously reported as the income of your wife, Ethel Wodehouse, constitutes income taxable to you.

In the computation of the deficiency disclosed herein a credit of \$4,250.00 representing income tax withheld from Ethel Wodehouse has been allowed inasmuch as the royalties from which this tax was withheld are held to be income taxable to you.

7  
*Exhibit A, Annexed to Petition.*

COMPUTATION OF TAX

Net income adjusted \$82,929.10

Less:

Personal exemption \$1,000.00

Balance (surtax net income) \$81,929.10

Less:

Earned income credit 300.00

Net income subject to normal tax \$81,629.10

Normal tax at 4% on \$81,629.10 \$ 3,265.16

Surtax on \$81,929.10 20,383.84

Total tax \$23,649.00

Less:

Tax withheld at source

Ethel Wodehouse \$4,250.00

Pelham G. Wodehouse 4,423.00 \$8,673.03

Tax previously assessed:

Original, account

No. 995430 \$1,633.22

Additional, account

No. 3 311306,

March 13, 1942 list 1,121.88 2,755.11 11,428.14

Deficiency of income tax \$12,220.86

*Exhibit A, Annexed to Petition.*

A Taxable Year Ended December 31, 1941

## ADJUSTMENTS TO INCOME

Net income as disclosed by return		\$38,557.02
Unallowable deductions and additional income		
(a) Other income	\$2,550.50	
(b) Doubleday Doran and Company Royalties	766.99	
(c) Attorneys' Fee	1,661.82	4,979.31
Net income adjusted		<u>\$43,536.33</u>

## EXPLANATION OF ADJUSTMENTS

(a) It is held that the amount of \$2,550.50 which was excluded from your income as allocable to royalties earned outside of the United States constitutes taxable income.

(b) Information on file discloses that your income from royalties from Doubleday Doran and Company was \$1,458.17 whereas you reported \$691.18 in your income from profession from that source. Therefore, your income has been increased by \$766.99.

(c) It is held that attorneys' fees of \$1,661.82 do not constitute ordinary and necessary expenses incurred in carrying on a trade or business and have, therefore, been disallowed.

*Exhibit A, Annexed to Petition.*

## COMPUTATION OF TAX

Net income adjusted		\$43,536.33
Less:		
Personal exemption		750.00
Balance (surtax net income)		\$42,786.33
Less:		
Earned income credit		1,400.00
Net income subject to normal tax		\$41,386.33
Normal tax at 4% on \$41,386.33		\$ 1,655.45
Surtax on \$42,786.33		15,436.75
Total tax		\$17,092.20
Less:		
Tax withheld at source		
Through Houghton Mifflin	\$ .87	
Through P. R. Reynolds & Son	7,342.50	
Through Doubleday Doran & Co.	105.28	\$7,448.65
Tax previously assessed:		
Original, account No. 67980213		6,841.47
		14,290.12
Deficiency of income tax		\$ 2,802.08



**Answer.**

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**[SAME TITLE.]**

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(Cert. Tr. Rec. on Review, pp. 23-26.)

The respondent, by his attorney, J. P. Wenchel, Chief Counsel for the Bureau of Internal Revenue, for answer to the petition heretofore filed in this proceeding, admits, denies, and avers as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits the allegations contained in paragraph 3 of the petition.

4. a to p, inclusive. Denies the allegations contained in subparagraphs a to p, inclusive, of paragraph 4 of the petition.

5. a. Admits that petitioner during the years 1923, 1924, 1938, 1940 and 1941 was a non-resident alien, but denies the remainder of subparagraph a of paragraph 5 of the petition.

g. Admits that the Curtis Publishing Company made payments in 1938 aggregating at least \$80,000 for rights in stories written by the petitioner and that Doubleday Doran & Company made payments in 1938 aggregating at least \$5,000 for rights in a story written by the peti-

*Answer.*

tioner. Denies the remainder of subparagraph g of paragraph 5 of the petition.

h. Denies the allegations contained in subparagraph h of paragraph 5 of the petition.

. . . . .

i. Admits that the Curtis Publishing Company made payments to the petitioner in 1941 aggregating at least \$42,500 for rights in a story written by the petitioner and that Collier's made payments to the petitioner in 1941 of at least \$2,000 for rights in a story written by the petitioner. Denies the remainder of subparagraph i of paragraph 5 of the petition.

k. Denies the allegations contained in subparagraph k of paragraph 5 of the petition.

. . . . .

8. That the petitioner received taxable income from sources within the United States during the calendar year 1938 in the sum of \$87,784.69, to wit, the sum of \$80,000 from the Curtis Publishing Company, and the sum of \$7,043.57 from Doubleday Doran & Company, representing royalties derived from his literary work, and the sum of \$741.12 from other sources. The petitioner in his Federal income tax return for the calendar year 1938 failed to report the sum of \$45,217.09 of said income of \$87,784.69 derived from sources within the United States and thereby understated his taxable net income and Federal income tax liability for such year.

9. The petitioner in his Federal income tax return for the calendar year 1938 reported gross income of \$42,567.60 and failed to report the said sum of \$45,217.09 as gross income, and thereby omitted from gross income

*Answer.*

an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the said return. The petitioner's return for said year was filed with the Collector of Internal Revenue, Baltimore, Maryland, on June 15, 1939, and the deficiency now asserted by the Commissioner for said year was assessed on June 14, 1944 under the provisions of the internal revenue laws applicable to jeopardy assessments.

WHEREFORE, it is prayed that the appeal be denied and that the tax and penalties as shown in the deficiency notice be in all respects approved.

J. P. WENCHEL

RPH

J. P. WENCHEL,

Chief Counsel,

Bureau of Internal Revenue.

OF COUNSEL:

E. C. ALGIRE,

Division Counsel.

WALT MANDRY,

Special Attorney,

Bureau of Internal Revenue.

## Reply.

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[SAME TITLE.]

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(Cert. Tr. Rec. on Review, p. 27.)

The petitioner, by his attorney, Watson Washburn, Esq., for reply to the respondent's answer in this proceeding, pursuant to leave of this Court granted March 21, 1943, respectfully shows:

1. The petitioner denies each and every allegation in paragraphs 7, 8 and 9, of respondent's answer, except that petitioner admits that his return for the calendar year 1938 was duly filed on or about June 15, 1939.

WATSON WASHBURN,

Counsel for Petitioner,

36 West 44th Street,

New York 18, N. Y.



## Findings of Fact and Opinion.

8 T. C. No. 72

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[SAME TITLE.]

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(Cert. Ty. Rec. on Review, pp. 28-57.)

Docket Nos. 3401, 6487.

Promulgated March 28, 1947.

4. Alleged assignments to his wife of undivided one-half interest of petitioner in novels, etc., written by him, *Held to be*, for purpose of securing tax advantages, equivalent to community property status in California which petitioner, a nonresident alien, could not assume, and were based on no real donative intent. Proceeds from the sale of such literary works taxable to petitioner.

5. Lump-sum payments for serial rights to literary productions taxable to petitioner. *Sax Rohmer*, 5 T. C. 183, affirmed 153 Fed. (2d) 61, certiorari denied, 328 U. S. 862, followed.

6. Allocation of income between sources within and without United States denied.

7. Attorneys' fees allowed under section 23 (a) (2), Internal Revenue Code.

*Watson Washburn, Esq.*, for the petitioner.

*Walt Mandry, Esq.*, for the respondent.

VAN FOSSAN, Judge: The respondent determined de-

*Findings of Fact and Opinion.*

iciencies in the petitioner's income tax liabilities and imposed penalties as follows:

Docket No.	Year	Deficiency	Penalty
6487	1923	\$ 2,699.83	\$ 881.03
	1924	5,567.25	1,555.07
	1938	12,220.86	
	1940	3,080.83	
	1941	2,802.08	
3401	1937	21,328.82	10,664.41

The petitioner claimed overpayments of \$1,121.89, \$3,156.32 and \$14,290.12 for the years 1938, 1940 and 1941, respectively.

The cases before us present a number of issues, some common to two or more of the taxable years and some peculiar to a single year. They are best stated by relating them to the several taxable years. The facts pertinent to such issues and the opinions thereon will be set forth in the same manner.

The petitioner is a British subject, formerly residing at Le Touquet, France. From June 1940 until the date of the petition, November 13, 1944, he was in the custody of the German Government in territory controlled by the German Army. During the years prior to June 1940, he was a resident of either England or France. During the taxable years he was a nonresident alien, with the exception of the period hereinafter mentioned. The petitioner was unable to attend the trial of the proceeding because of the Government's restrictions on travel from France.

The petitioner was a prolific writer of serials, plays, short stories and other literary works. He is a well-known writer of stories and has a wide reputation as such in the United States. His writings were in demand by the public and were accepted and published by the Saturday Evening Post, Red Book, Liberty, Collier's, Cosmopolitan, and other such magazines. During the taxable years and for several

*Findings of Fact and Opinion.*

years prior thereto, the sale of the petitioner's writings in the United States was accomplished by one or more literary agents.

\* \* \* \*

[Note as to omitted matter: To avoid encumbering the record and to save expense, petitioner-on-review has not printed the separate divisions of the Tax Court's Findings of Fact and Opinion affecting the tax years 1923, 1924 and 1937, as to which petitioner prevailed in the Tax Court and has taken no appeal, and which involved no issue or contained no matter related to any question brought up for review. In addition, findings and opinion as to the year 1937 were in a separate proceeding consolidated for purposes of trial. The omitted portions appear at pages 30-44 of the certified transcript of the record, on review and in the official reports, 8 T. C. 638-647.]

\* \* \* \*

*The Year 1938**Issues:*

(1) The applicability of the statute of limitations under section 275 (c);

(2) The taxability to the petitioner or to his wife of payments for serial rights to novels and other literary works of which the petitioner was the author;

(3) The inclusion in income of jump-sum payments for literary productions;

(4) The allocation of income between sources within and without the United States;

(5) The disallowance of attorneys' fees.

*Findings of Fact and Opinion.*

## FINDINGS OF FACT

In the fall of 1936, on his way to Hollywood, California, the petitioner consulted his attorney Washburn (and his partner Malone) relative to his income tax status. Washburn advised the petitioner regarding the taxability of his salary. The petitioner then went to Hollywood and remained there for about a year. While there the petitioner wrote to Washburn in connection with his income tax return for the year 1936, filed in Hollywood on a community property basis. The petitioner considered that his entry into the United States under a quota visa made him a resident of this country. Washburn questioned that status but suggested that if the petitioner was a resident of France, the community property law of that country would govern and a community property return would be proper.

When the petitioner and his wife, Ethel Wodehouse, came East in the fall of 1937 they consulted Washburn again and were advised to consult their counsel in England with reference to their community property status. The petitioner stated that he and his wife had no agreement that would prevent a community property return; that they actually had a joint account usually; and had "no objection whatever to an equal share of their worldly gains." Washburn then advised them that if the petitioner wished to give his wife half of his property "he probably could achieve the same result as the community property jurisdiction by making a present to her of a half interest in his writings, if he did so before any income was realized from them." The petitioner acquiesced in the suggestion of his attorney. The assignment of January 3, 1938, was drafted by the petitioner's attorney.

After the petitioner returned to England he informed Washburn that his English barrister told him that he was domiciled in England. Thereupon Washburn prepared



*Findings of Fact and Opinion.*

amended returns for the petitioner on a separate property basis and the petitioner paid the required additional tax. Mrs. Wodehouse applied for a refund of the tax paid by her:

On January 12, 1938, Washburn received from Mrs. Wodehouse an assignment dated January 3, 1938, transferring to her an undivided one-half interest in the literary property, right, title and interest in and to a manuscript of an unpublished novel entitled "The Cow-Creamer", together with all profits arising from printing, publishing and selling it in serial or book form, in newspapers and magazines and from all dramatic, radio, motion pictures, etc., rights therein.

On October 15, 1938, Washburn received a similar assignment dated September 1, 1938, from the petitioner to his wife, of one-half interest in the copyright of, and the property in, a manuscript entitled "Uncle Fred in the Springtime". Upon the receipt of the above assignments Washburn duly notified the petitioner's literary agent, Reynolds, to make any contracts and payments from the sale of the novels for the joint benefit of the petitioner and his wife.

On October 22, 1937, the Reynolds Agency sent part of "The Cow-Creamer" (also known as "The Silver Cow") to the Saturday Evening Post (Curtis Publishing Company) and on February 5, 1938, delivered the remainder thereof to that company. On February 22, 1938, the Curtis Publishing Company accepted the story, "The Cow-Creamer", and sent its check for \$40,000 to the Reynolds agency on the same date. The memorandum of acceptance contains the following language:

This check is offered and accepted with the understanding that The Curtis Publishing Company buys all rights in and of all stories and special articles appearing in its publications and with

*Findings of Fact and Opinion.*

the further understanding that every number of these publications in which any portion thereof shall appear shall be copyrighted at its expense. After publication in a Curtis periodical is completed it agrees to reassign to the author on demand all rights, except American (including Canadian and South American) serial rights.

## MOTION-PICTURE RIGHTS

Please note that our reservation of serial rights (which includes publication in one installment) includes new story versions based on motion-picture or dramatic scenarios of short stories and serials that have appeared in Curtis publications, and that we permit the use of such versions only under the following conditions: \* \* \* When selling motion-picture or dramatic rights of matter, you must notify the producer to this effect, so that there may be no misunderstanding on his part and no infringement of our rights.

The Reynolds Agency remitted to the petitioner and to his wife each the sum of \$17,100, after deducting commissions and taxes. The book rights to "The Cow-Creamer" were sold to Doubleday, Doran & Company for \$5,000.

\* On December 13, 1938, the Curtis Publishing Company accepted the story "Uncle Fred in the Springtime" subject to the same agreement of reassignment of rights as that contained in its acceptance of "The Cow-Creamer", and paid \$40,000 therefor. The Reynolds Agency sent to the petitioner and to his wife each \$17,000 to cover the proceeds thereof, less charges. "The Silver Cow" was published from July 9th to September 3, 1939, and "Uncle

*Findings of Fact and Opinion.*

"Fred in the Springtime" was published from April 22nd to May 27th of that year.

The net paid average circulation of the Saturday Evening Post was as follows:

*Six months ending December 31, 1937:*

Within United States	3,037,562
Outside United States (including Canada)	189,867

*Six months ending June 30, 1938:*

Within United States	3,095,355
Outside United States (including Canada)	191,228

*Six months ending December 31, 1938:*

Within United States	3,061,009
Canada	139,739
Miscellaneous and foreign	54,985

*Six months ending June 30, 1939:*

Within United States	3,104,208
Canada	145,002
Miscellaneous and foreign	52,648

During 1938 the petitioner paid to Washburn, or his firm, \$753.01 for legal services in connection with his handling the petitioner's literary affairs and for advice concerning the preparation of the petitioner's income tax returns. Approximately one-half of this amount was paid for services relating to income taxes. No part of such sum was for advice as to the assignments of property to the petitioner's wife.

*Findings of Fact and Opinion.*

## OPINION

The applicability of the statute of limitations (section 275 (c)) is dependent upon the determination of the second issue, since the inclusion of the amounts paid to the petitioner's wife, in his income concededly increases his income more than the statutory 25 per cent. Therefore, we will first consider whether or not such payments may properly be charged to the petitioner's income.

The respondent does not challenge the form of the assignments executed by the petitioner transferring to his wife one-half of his interest in "The Cow-Creamer" and "Uncle Fred in the Springtime" but he does contend that such assignments were designed solely to prevent the taxation of all the petitioner's income to him. A careful and comprehensive study of the entire record before us leads to the conclusion that the respondent's contention is well founded.

It is axiomatic that a taxpayer may take all proper measures to reduce his tax liability. The question is: Under the circumstances, were the measures proper? It is unnecessary to recount all of the facts leading up to the assignments made by the petitioner to his wife in the taxable year. It is enough to note that they lacked the merit of reality.

The specific consideration which impelled the assignments was the community property return with which the petitioner apparently became acquainted in California. With entire frankness, the petitioner's attorney recited the genesis of the assignments and the reasons therefor. He freely stated that the equivalent of a community property status "*probably*" could be accomplished by the petitioner's making a present to his wife of a half interest in his writings—prior to the realization of income therefrom.

Thus the petitioner's primary motivating purpose—and



*Findings of Fact and Opinion.*

in fact the only purpose reflected in the record—was to divide his tax burden with his wife and so to reduce the amount of their aggregate taxes. Neither the petitioner nor his wife was present to testify as to the interest in the assignment and the circumstances surrounding it. To be effective a gift must be real. We find that no real donative intent prompted the petitioner's assignments to his wife. He attempted to utilize a pseudo gift in order to circumvent the prohibition against the filing of a community property income tax return in California by a nonresident alien. The means to accomplish this end originated with his attorney. He merely acquiesced in the method suggested and followed the routine and adopted the forms suggested by the attorney.

We observe the meticulous adherence to form which characterized the tax-avoidance efforts. Notices of the alleged gift by assignment were sent to the petitioner's literary agent—even a photostat of the "assignment" was enclosed—and remittances and reports were made on the basis of a joint ownership of the stories. Such acts are expected to be consistent with the petitioner's theory of a genuine assignment but are of no probative worth when the assignment itself is ineffective for income tax purposes. We note, however, that the notices of acceptance issued by the Curtis Publishing Company, subsequent to the alleged assignments, contained the provision that after publication the company agreed to reassign to the author, on his demand, all rights, except certain serial rights.

It is significant that notice of the alleged joint ownership of the novels, serials and stories sold to the Saturday Evening Post was not given to the publishing company, the one concern vitally interested in knowing the identity of the property owner to whom it was paying large sums of money. We conclude, therefore, that the proceeds of the novels and stories written by the petitioner and sold by his agents in 1938 are taxable to him. Since they

### *Findings of Fact and Opinion.*

amount to more than the 25 per cent prescribed in section 275 (c), that section applies to the taxable year and the statute of limitations has not tolled.

The third issue presents the taxability of lump sums paid for serial rights to literary works. This question is raised for the years 1940 and 1941 also, and will be discussed hereafter.

The fourth issue, involving the allocation of income between sums derived from sources within and without the United States, is not supported by evidence relating to the year 1937, as admitted by the petitioner's counsel, and therefore is decided in favor of the respondent.

The amounts expended by the petitioner for legal services aggregating \$753.01, are allowable deductions under the provisions of section 23 (a) (2). They were directly related to the production and collection of income, to the management of property held for the production of income, and to the preparation of the petitioner's income tax return. Regulations 103, Article 19.23 (a)-13, as amended by T. D. 5513 (May 14, 1946).

### *The Years 1940 and 1941*

#### *Issues:*

- (1) The inclusion in income of lump-sum payments for literary works;
- (2) The taxability to the petitioner or his wife of payments for serial rights to novels and other literary works of which the petitioner was the author (1940);
- (3) The inclusion in income of payments for the use of literary property outside the United States;
- (4) The disallowance of attorneys' fees.

## *Findings of Fact and Opinion.*

### FINDINGS OF FACT

Under date of December 1, 1939, the petitioner executed a form of assignment to his wife of an undivided one-half interest in the manuscript entitled "Quick Service", together with a like interest in all rights thereto of every kind. The assignment was mailed to Washburn, who gave due notice thereof to the Reynolds Agency. On January 10, 1940, that Agency received the manuscript of "Quick Service" and sent it to the Curtis Publishing Company, which accepted it on January 1, 1940, and sent to the agency its check for \$40,000 in payment therefor. The memorandum of acceptance from the company was identical in form with that sent with its check for "The Cow-Creamer". The Reynolds Agency remitted to the petitioner and his wife each the sum of \$17,000, after deducting commissions and costs. The novel was published by the Saturday Evening Post from March 4, 1940 to June 22, 1940. The book rights to the novel were sold to Doubleday, Doran & Company for \$5,000.

The net paid average circulation of the Saturday Evening Post was as follows:

#### *Six months ending December 31, 1939:*

Within United States	3,130,396
Canada	148,163
Miscellaneous and foreign	52,230

#### *Six months ending June 30, 1940:*

Within United States	3,231,496
Canada	153,291
Miscellaneous and foreign	52,196

### *Findings of Fact and Opinion*

On July 23, 1941, the Reynolds Agency sold to Hearst's International-Cosmopolitan Magazine all the American and Canadian serial rights to an article entitled "My Years Behind Barbed Wire", written by the petitioner, for \$2,000.

The net paid average circulation of Hearst's International-Cosmopolitan was as follows:

*Six months ending June 30, 1941:*

Within United States	1,850,014
Canada	41,705
Miscellaneous and foreign	21,618

*Six months ending December 31, 1941:*

Within United States	1,961,600
Canada	49,436
Miscellaneous and foreign	24,164

On August 12, 1941, the Reynolds Agency sold to Curtis Publishing Company all North American (including Canadian) serial rights to "Money in the Bank," a novel written by the petitioner, for \$40,000.

The net paid average circulation of the Saturday Evening Post was as follows:

*Six months ending June 30, 1941:*

Within United States	3,328,875
Canada	121,307
Miscellaneous and foreign	43,019

*Six months ending December 31, 1941:*

Within United States	3,425,025
Canada	122,049
Miscellaneous and foreign	57,546

In 1941 the petitioner paid Washburn or his firm \$1,661.82 for legal services in connection with his handling the petitioner's literary affairs and for advice relating



*Findings of Fact and Opinion.*

to, and for the preparation of, the petitioner's income tax returns. Approximately one-half of this amount was paid for the income tax services.

OPINION

The first issue, found also in the year 1938, presents the question of the taxability of lump-sum payments for serial rights to literary works. Counsel for the petitioner concedes that substantially the same issue was raised and decided in *Sax Rohmer*, 5 T. C. 183, affirmed 153 Fed. (2d) 61, certiorari denied, 328 U. S. 862.

In *Sax Rohmer*, *supra*, we held that the lump-sum payments for serial rights were royalties and, as such, were taxable to the recipient. The arguments advanced in the cases at bar follow the same pattern as those appearing in the *Sax Rohmer* case, as presented to this Court and to the Circuit Court of Appeals. The petitioner's contentions were rejected in both courts and for the same reasons stated in the opinions therein, they are rejected here.

The facts on which the second issue is predicated are identical in character with those relating to the second issue in the year 1938. As we have there held, payments for serial rights to novels and for other literary works of the petitioner made during the taxable years, are taxable to him.

The third issue involves the inclusion in income of payments for the alleged use of literary property outside of the United States. If a specific portion of the amounts paid for serial rights are allocable and attributable to the Canadian circulation of the magazine which published the novels and articles, then such portion is not includible in the petitioner's income. (Section 119 (c) and section 211 (a) (1). (A), Internal Revenue Code.)

*Findings of Fact and Opinion.*

This question was also presented in *Sax Rohmer, supra*. There we said:

At the time the licensing agreement was settled upon, the parties apparently made no effort to segregate the value paid for the United States rights from that paid for the Canadian rights. The circulation figures do not furnish a sufficient basis upon which we could determine that any of the income was derived from sources outside the United States. Since there is no basis upon which we could properly make any allocation, it follows that the full amount must be deemed to be from sources within the United States.

See also *Estate of Alexander Marton*, 47 B. T. A. 184.

So here, there is no evidence of record disclosing that when the publishing company accepted the stories of the petitioner under the agreement indicated in the memoranda of acceptance, it and the petitioner (or the petitioner's agent), made any effort to segregate the value of the Canadian rights from the United States rights. In the cases at bar, the petitioner offered testimony showing the relative circulation of the magazines in the United States and Canada, the dates of publication of the literary productions and the opinion of the literary agent as to the value of the Canadian rights. These collateral evidential facts do not afford us a reliable basis for assigning and fixing a value, if any, to the Canadian rights. The parties to the contract were best able to make a proper allocation and segregation of the respective values. They neglected or chose not to do so. The omission, or failure, of such proof can not be corrected by a guess as to the value of a right which may have no value at all. We sustain the respondent's contention on this issue.

The fourth issue relating to attorney fees presents the same question as that involved in the fifth issue for the

*Findings of Fact and Opinion.*

year 1938. The evidence supporting the petitioner's contention relating to the taxable year is similar to that in the prior year. Therefore, as there held, the sum of \$1,661.82 is an allowable deduction for these taxable years, under the provisions of section 23 (a). (2).

*Decisions will be entered under Rule 50.*

**Respondent's Computation for Entry of Decision.**

[SAME TITLE.]

(Cert. Tr. Rec. on Review, pp. 58-64.)

The attached proposed computation is submitted, on behalf of the respondent, to The Tax Court of the United States, in compliance with its opinion determining the issues in this proceeding.

The computation is submitted in accordance with the opinion of the Court, without prejudice to the respondent's right to contest the correctness of the decision entered into by the Court, pursuant to the statutes in such cases made and provided.

J. P. WENCHEL  
Chief Counsel,  
Bureau of Internal Revenue.

OF COUNSEL:

F. C. ALGIRE,  
Division Counsel,

WALT MANDRY,  
Special Attorney,

Bureau of Internal Revenue.

Without prejudice to the right of appeal as provided by law I agree that the attached computation is in accord-

*Respondent's Computation for Entry of Decision.*

ance with the opinion of The Tax Court of the United States in the above-entitled appeal.

(Sgd.) WATSON WASHBURN  
Counsel for Petitioner.

Year Ended December 31, 1938.

## ADJUSTMENT TO NET INCOME

Net income shown in deficiency letter dated July 21, 1944 \$82,929.10

Deduction:

(a) Attorney fees 753.01

Net income as corrected \$82,176.09

## EXPLANATION OF ADJUSTMENT

(a) A deduction of \$753.01 is allowed for attorney fees. (See decision of The Tax Court of the United States, page 25; (8 T.C. #72).

## COMPUTATION OF TAX

Net income as corrected \$82,176.09

Less:

Personal exemption 1,000.00

Balance (surtax net income) \$81,176.09

Less:

Earned income credit (10% of \$3,000.00) 300.00

Balance subject to normal tax \$80,876.09

Normal tax at 4% on \$80,876.09 \$ 3,235.04

Surtax on \$81,176.09 19,999.81

Interest

Liability \$3,902.60 \$23,234.85



*Respondent's Computation for Entry of Decision.*

	Interest	Tax
Previously assessed:		
Original, Acct. #995430	—	\$ 1,633.22
Additional, Acct. #3-511306,		
March 12, 1942 list	\$ 184.30	1,121.89
Additional, June 14, 1944 list,		
Spl. #1, page 0, line 4	3,848.73	12,220.86
Tax withheld at source		
Ethel Wodehouse	\$4,250.00	
Pelham G. Wodehouse	4,423.03	8,673.03
Total amount assessed and withheld	\$4,033.03	\$23,649.00
Liability	3,902.60	23,234.85
Unpaid assessment to be abated	\$ 130.43	\$ 414.15
Payments:		
Tax withheld	—	\$ 8,673.03
June 15, 1939	—	1,633.22
March 24, 1942	\$ 184.30	1,121.89
Total	\$ 184.30	\$11,428.14
Liability	3,902.60	23,234.85
Deficiency (assessed and unpaid)	\$3,718.30	\$11,806.71

Year Ended December 31, 1941

## ADJUSTMENT TO NET INCOME

Net income shown in deficiency letter dated  
 July 21, 1944 \$43,536.33

## Deduction:

(a) Attorney fees 1,661.82

Net income as corrected \$41,874.51

*Respondent's Computation for Entry of Decision.*

## EXPLANATION OF ADJUSTMENT

(a) A deduction of \$1,661.82 is allowed for attorney fees. (See decision of the Tax Court of the United States, page 30), (8 T.C. No. 72).

Net income as corrected		\$41,874.51	
Less:			
Personal exemption		750.00	
Surtax net income		\$41,124.51	
Less:			
Earned income credit (10% of \$14,000.00)		1,400.00	
Balance subject to normal tax		\$39,724.51	
Normal tax at 4% on \$39,724.51	\$ 1,588.98		
Surtax on \$41,124.51	14,555.99		
			Interest
Total tax	\$16,144.97	\$	250.28
Previously assessed:			
Original, Acct. #6-980213	\$ 6,841.47	\$	—
Additional, June 14, 1944 list,			
Spl. #1, page 0; line 6	2,802.08		378.09
Tax withheld at source thru			
Houghton Mifflin	\$ .87		
P. R. Reynolds & Son	7,342.50		
Doubleday Doran & Co.	105.28	7,448.65	—
Total amount assessed and withheld	\$17,692.20	\$	378.09
Liability	16,144.97		250.28
Unpaid assessment to be abated	\$ 947.23	\$	127.81
Payments:			
Tax withheld	7,448.65	\$	—
June 2, 1942	6,841.47		None
Total	\$14,290.12	\$	None
Liability	16,144.97		250.28
Deficiency (assessed and unpaid)	\$ 1,854.85	\$	250.28

# Decision.

[SAME TITLE.]

(Cert. Tr. Rec. on Review, p. 65).

Pursuant to the Court's Findings of Fact and Opinion, promulgated March 28, 1947, the parties herein having on May 29, 1947, filed an agreed computation of tax, it is

ORDERED AND DECIDED: That there are deficiencies in income tax and penalties, as follows:

Year	Deficiency (Assessed and Unpaid)	
	Tax	Penalty
1923	\$ None	None
1924	None	None
1938	11,806.71	None
1940	8,080.83	None
1941	1,854.85	None

Enter: \_\_\_\_\_

(Signed) BOLON B. TURNER,  
Judge.

Entered Jun 10 1947

(Seal)

## Testimony.

Paul R. Reynolds—for Petitioner—Direct:

(Transcript, p. 44. \*)

By Mr. Washburn:

Q. Mr. Reynolds, your sales of these serial rights you have just testified to, included, as appears from the exhibits both Canadian and American and United States serial rights?

A. Yes.

Q. Have you any opinion as to the value of the Canadian serial rights to Mr. Wodehouse's works—to one of Mr. Wodehouse's novels in the years 1938, 1940 and 1941?

Mr. Mandry: I object to that, your Honor. Here is a sale to the Saturday Evening Post of certain rights and they purchased those rights, and the exhibits show what they purchase it for, and I don't think the witness here is qualified as to what was the value of those rights to the Saturday Evening Post or the petitioner.

The Court: The witness has not been qualified.

Mr. Washburn: Does Mr. Mandry object to his qualifications?

Mr. Mandry: Yes, on that one ground.

Mr. Washburn:

Q. Mr. Reynolds, how long have you been a literary agent?

(Transcript, p. 45.)

A. Since the fall of 1927.

\* Hereinafter, "Transcript" refers to reporter's paging of stenographic Transcript of proceedings at trial.



*Paul R. Reynolds—for Petitioner—Direct.*

Q. Have you been constantly engaged in that line of work since then?

A. Yes.

Q. How long has your firm been literary agents?

A. Since 1893.

Q. Are you familiar with the sales of stories in Canada and the United States over the period of years in which you have been in the business?

A. Yes, I am.

Q. Have you made sales yourself in behalf of authors both in Canada and the United States?

A. Yes, we made sales individually in Canada and occasionally individually in the United States, much more rarely.

Q. And frequently have you made sales together?

A. Often together but there are very few magazines in this country who will buy American rights without Canadian.

The Court: I cannot understand you.

The Witness: We often made sales of American and Canadian rights, and we have made sales of Canadian rights; and we have occasionally, but very rarely, made sales of American serial rights solely. Nearly all the American books in this country circulate in Canada and they would not buy a story unless they could buy Canadian as well as American rights, but there are today one or two who do not circulate in Canada, only here.

(Transcript, p. 46:)

By Mr. Washburn:

Q. Have you ever sold Canadian serial rights alone of an author as well known as Mr. Wodehouse?

A. No, not that I can recall. Their magazines are

*Paul R. Reynolds—for Petitioner—Direct.*

small, and wouldn't be able to pay anything like what he could get in this country, and the magazines that pay him in this country would go into Canada, and would want Canadian rights. Often, if we cannot sell a story in this country, we sell it in Canada.

Q. What is the most you have ever received for an author's book rights in Canada alone?

A. Book rights or serial?

Q. Serial rights to a book?

A. I think \$1500 is the most that I can recall.

Q. Was that for an author not so prominent as Mr. Wodehouse?

A. Nowhere near.

(Transcript, p. 48.)

By Mr. Washburn:

Q. Mr. Reynolds, what was your arrangement for compensation with Mr. and Mrs. Wodehouse during these years?

A. We received a commission.

Mr. Mandry: Was your arrangement a written agreement?

The Witness: No.

The Court: Proceed.

By Mr. Washburn:

Q. You may answer, Mr. Reynolds.

A. We didn't have any written agreements.

Q. You may answer my question now.

(The question and answer were read.)

*Paul R. Reynolds—for Petitioner—Direct.*

By Mr. Washburn:

Q. What was the amount?

A. Five per cent.

Q. What was the arrangement for handling the funds which you received from the Saturday Evening Post?

A. We collected the money, took our commission, retained any other charges, withheld the non-resident alien income tax and paid the proceeds to Mr. Wodehouse or to Mr. and Mrs., if the story was assigned to Mrs.

Q. Did you put the proceeds in your general checking account first?

(Transcript, p. 49.)

A. In our business account.

Q. Did you make the contract on their behalf directly with the Saturday Evening Post?

A. Yes. I don't know whether you would call it a contract legally.

Q. Well, the arrangement for sale.

A. Yes. I say I did, I did in most cases.

Q. I am speaking of the cases you testified to this afternoon, in 1938, 1940 and 1941?

A. My father was then alive. I may have talked it over with him, but at that time I was doing most of the work. My father may have spoken to an editor, but only the two of us.

Mr. Washburn: I would ask your Honor's permission to recall Mr. Reynolds to testify on the Canadian allocation after the proof of the circulation is offered.

The Court: Any cross-examination.

*Paul R. Reynolds—for Petitioner—Cross.*

Cross Examination by Mr. Mandry:

Q. Mr. Reynolds, I believe you said your firm had been agents for the petitioner since before the First World War?

A. Whether it was before or during—

Q. Approximately that time?

A. Yes.

(Transcript, p. 50.)

Q. And the Paul R. Reynolds & Son Agency—is that your name for the agency?

A. Yes.

Q. It is not a corporation?

A. No.

Q. And during the time that your father was alive, you were associated with him in that agency?

A. We were partners.

Q. And I assume during that time you have sold a great number of stories for the petitioner?

A. Yes.

Q. The petitioner was a well-known writer of stories?

A. Very.

Q. And had quite a wide reputation in the United States as a writer?

A. That is correct.

Q. And to what magazine did you usually sell his stories?

A. These stories were to the Post. Before that for quite a while to Collier's, and there was a period before that around 1928, as I remember it, it was to Liberty. Before that, again to the Post. There was one contract with the American, I think, in the early 30's.

Q. Was there a wide demand for his stories?

A. Yes, there were only three or four places that you



*Paul R. Reynolds—for Petitioner—Cross.*

could sell them, but they were very valuable to those places.

(Transcript, p. 51.)

Q. And you had very little difficulty in placing them with those outlets?

A. The great question was price.

Q. Mainly the question of a proper price?

A. Yes.

Q. Who wrote all of the stories that you sold under the name of Pelham G. Wodehouse?

A. Mr. Wodehouse.

Q. Was he assisted in the writing field by his wife?

A. Not that I know of.

Q. Did you ever sell any stories written by Mrs. Pelham G. Wodehouse?

A. No.

Q. With reference to the story, "The Cow Creamer," when did you receive that story from Mr. Wodehouse for sale?

Mr. Washburn: I was just going to suggest, I don't think it is in evidence that Mr. Reynolds received anything from Mr. Wodehouse for sale, but from Mr. and Mrs. Wodehouse for sale.

By Mr. Mandry:

Q. Do your records show from whom you received the manuscript, "The Cow Creamer"?

(Transcript, p. 52.)

A. I can say that I think we received it from Mr. Wodehouse. We kept no records of the date of receipt. We would have a record today of the date it went to the Post.

*Paul R. Reynolds—for Petitioner—Cross.*

Q. You have no correspondence showing the transmission of that story to you?

A. Whatever correspondence I have with Wodehouse is very, very slim. Wodehouse is not a person to write letters. Roughly what would happen: We would receive the story and we would read it right away, and when he was writing for the Post it would immediately go to the Post. I would say we received it within a week before it went to the Post and the Post practically always decides within a week, and I would have a card of the date it went to the Post, but I would have no record of the day we received it unless there was a record from Wodehouse with it.

Q. Manuscripts which you received as a literary agent were ordinarily accompanied by a letter of transmission, were they not?

A. Yes, that probably came separate from the letter. I am trying to guess, you understand, this is eight years ago.

Q. If there had been such a letter, you would have kept it?

A. I should think so.

(Transcript, p. 53)

Q. You haven't destroyed any of your files, have you?

A. No, but Wodehouse's file had been mauled over and mauled over and there were very few letters from him. The letters covering these years we have got here. There were some letters in the exhibits.

Q. Do you have a letter of transmittal of "The Cow Creamer" manuscript?

A. Is that in with "The Cow Creamer" exhibit?

Here is a letter to Wodehouse about "The Silver Cow" written by my father. It says, "I read the whole of 'The Silver Cow.'" That letter was written by my father after he received the story.

*Paul R. Reynolds—for Petitioner—Cross.*

Q. Then, according to your files it showed that your office received the manuscript, "The Silver Cow" not later than February 8th, 1938?

A. Yes, the first serial rights are the most valuable that you try to sell. We have a card for each story, and that has the date it went to the Post on. The notes are pretty complete.

Q. And this letter of February 8th, 1938, written by your father was addressed to Pelham G. Wodehouse?

A. That is right.

Q. Would that indicate to you that the story was received from Pelham G. Wodehouse?

A. I think the stories would have been sent by him.

(Transcript, p. 54.)

Q. Now, that story was sent by Mr. Wodehouse somewhere in England or France?

A. France.

Q. And it would have taken a week or so, probably to have gotten here?

A. Probably.

Q. Do your records show when you first opened negotiations for the sale of "The Silver Cow"?

A. The way the thing works is, long before the story is written, as a rule, we sell a story to the Post, and we would talk to them about the next story orally. The editor of the Post comes into our office every week and more than once I would go to Philadelphia and talk to the chief himself, and he tells me how he feels, what he thinks he can pay for the next story, and it is a sort of an oral arrangement. I don't know exactly what you are getting at.

Q. I am merely asking what your records show.

A. Our record shows—I can bring in tomorrow—maybe I should have— When we offer the story to the Post there

*Paul R. Reynolds—for Petitioner—Cross.*

is a card with the date—the author and the date the story went to the magazine; and if it is sold, it is marked sold and filed, and a new card made for the book rights and another for the picture rights; and if it isn't sold to the Post, it is marked rejected, and if we offer it to another magazine it is marked—

(Transcript, p. 55.)

Q. Will you bring these cards in tomorrow?

A. I will. If it is a question of price, I have brought the books also, our books.

Q. Can you state from your records the date upon which this story, "The Silver Cow" was sold to the Curtis Publishing Company?

A. Yes, our books would show the date. They usually would phone, and we probably marked the date on the card. The Post always pays, checks go out Tuesday after they buy a story, and with the check comes that. That we received on Wednesday, I think. If you will look it up you will find that date is Tuesday, February 22nd.

Q. This letter of February 22nd, 1938, which is one of the sheets attached and included in Exhibit 4. Then the story was purchased by the Curtis Publishing Company sometime prior to February 22nd, 1938?

A. Yes.

Q. And those card records will show definitely those dates?

A. It would not be more than a week before.

Q. And you stated, I believe, that usually those sales were as a result of conferences between you and members of the Curtis Publishing Company?

A. That is right.

(Transcript, p. 56.)

Q. Do you recall any difficulty in making the sale of "The Cow Creamer"?

A. I don't recall specifically. As I remember his price

*Paul R. Reynolds—for Petitioner—Cross.*

was settled at forty. In earlier periods we got as much as fifty. That is the most I think we ever got.

Q. You mentioned the fact that you sometimes discussed matters with the publishers prior to the receipt of the manuscripts?

A. Yes.

Q. Was that because you were informed a writer was writing a certain story or you anticipated that he would have a certain amount of stories produced?

A. My father handled Wodehouse for a long period of years. He made his living by his writing, and we wouldn't write a letter agreeing to deliver a story, but we wanted to know if they wanted to go on with Wodehouse or whether they were tired of him and didn't want any more Wodehouse. And, of course, we were selling them stories by other authors at the same time.

Q. And your usual method of sales of Wodehouse stories, it was a question of discussion, and then would the Curtis Publishing Company call you up and say, "We will take the story," and then it is a question of deciding on the price?

A. Yes, sometimes the price would have been agreed upon in advance, and we knew they were going to buy the story unless for some reason Wodehouse wrote a very poor story, in their opinion.

(Transcript, p. 57.)

You were asking about letters from Wodehouse. He wrote very few. As I remember it, in France he had a secretary—

Q. Exhibit 5 refers to the manuscript "Uncle Fred in the Springtime," and assignment dated September 1, 1938. Does your file indicate from whom you received that manuscript?

A. I doubt it. This I am somewhat guessing, but it



*Paul R. Reynolds—for Petitioner—Cross.*

is our custom—let us say—that purely form letters we destroyed. Wodehouse had a secretary in France and the secretary would say, "I am sending under separate cover such and such," a letter that we could not keep. Any letter that said anything we would have kept. I could not say accurately. You asked me if Wodehouse sent the story, and I said he did, and if you asked me again, I would say his secretary did, but it came from him. And he and his wife were living at that time in France.

Q.: One sheet of Exhibit 8 shows that Curtis Publishing Company sent you a check on December 13th, 1938, for "Uncle Fred in the Springtime," does it not?

A. Correct.

Q. Do your records show when you commenced negotiations for the sale of that story?

(Transcript, p. 57-a.)

A. It would show the date the manuscript went off to Philadelphia, not necessarily showing anything else.

Q. But your testimony with respect to the method of handling the story, "The Cow Creamer," is applicable to the handling of this story generally?

A. Yes; the editor comes in every Thursday. If I had it Tuesday or Wednesday, I would give him if Thursday. He would read it on the train. But even then that would be entered on the card, the date he got it.

Q. The sale of the story "Quick Service," in 1940, Exhibit 6, refers to assignment dated December 1, 1939. Exhibit 7 with reference to that story shows that Curtis Publishing Company sent you a check on January 16th, 1940, for that story. Is your testimony with respect to handling the other two stories applicable to this story in general?

A. Yes, so far as I know.

*Paul R. Reynolds for Petitioner—Cross.*

Q. And I understand you will have cards here to-morrow showing certain information regarding all three stories?

A. Correct.

Q. You testified on direct examination that you had no written contract with Mr. Wodehouse or Mrs. Wodehouse for the disposition of these stories in 1938 and 1940. What kind of arrangements had you had with Mr. Wodehouse prior to 1938 for the sale of his stories?

(Transcript, p. 58.)

A. We don't have contracts with any of our clients.

Q. You have some arrangement?

A. When I say contracts, no written contracts. A writer agrees to give me his work. I go ahead and try to place it. I don't make a sale without consulting him unless I know him and know the situation and know he will be pleased and satisfied.

Q. I take it then you had an oral understanding with Mr. Wodehouse prior to 1938 for the sale of his stories and for a certain commission fee for you for the payment of services?

A. That is correct.

Q. What happened commencing on January 1, 1938, regarding the disposition of stories written by Mr. Wodehouse?

A. I don't know what you mean. I don't know why the significance of the date.

Q. Did you receive any other instructions regarding the disposition of his stories other than you had with Mr. Wodehouse prior to January 1, 1938?

A. We received assignments. You are referring to the assignments to Mrs. Wodehouse?

Q. I am asking you whether you had instructions re-

*Paul R. Reynolds—for Petitioner—Cross.*

garding your arrangements for the sale of Mr. Wodehouse's literary products?

A. No, unless the receipt of assignments you consider as a direction.

(Transcript, p. 59.)

Q. When did you last see Mr. Wodehouse prior to January 1st, 1938, if you can recall that far back?

A. I saw him in Hollywood, but I couldn't tell you the year. I think it was before 1938.

Q. He was in Hollywood in 1936, wasn't he?

A. I would have to look up my records in my office and see if I can find a clue.

Q. Do you recall whether he was in Hollywood—

A. I know I saw him in Hollywood; I remember I had tea with him and his wife, but the date I cannot recall now.

Q. If I said the year 1937, would that refresh your memory at all?

A. I don't remember, but I may be able to—if I can look up my office and correspondence to find out when he was in Hollywood, then I could find out when I was out there, but I cannot remember now.

Q. Do you recall whether it was prior to 1938?

A. I think I saw him in Hollywood prior to 1938.

Q. Have you seen him since that time when you saw him in Hollywood?

A. I think that was the last time I saw him. I have only seen him myself maybe half a dozen times.

Q. Did you see Mrs. Wodehouse since January 1, 1938?

(Transcript, p. 60.)

A. I don't think so, but I don't like to be certain.

**Watson Washburn—for Petitioner—Direct:**

(Transcript, p. 68.)

Q. What happened to Mr. Wodehouse's income tax situation after the settlement was effected in 1936?

(Transcript, p. 69.)

A. Mr. Wodehouse came to us in the fall of 1936 with his wife. He had made a contract to work out at Hollywood. He and his wife saw me here on their way through to Hollywood, and Mr. Malone, we both saw them. He had filed returns for 1934, 1935,—up to that time (when they were due on June 15th of each year. While he was going through here he consulted us regarding, or he told us that he had made this contract at Hollywood for which he was to receive a substantial salary, I think at about the rate of fifty or seventy-five thousand dollars a year, for some months, six months or more. And my recollection is that he showed me then a contract which he had made with Siva a couple of years before, and he didn't know whether his salary from Hollywood should be paid over to Siva or whether it belonged to him individually.

My recollection is that I told him that it wouldn't make any difference so far as I could see to the income tax situation of either himself or Siva, because it was my opinion that the salary, his personal salary for services, would be taxed to him personally anyway, regardless of any assignment of the right to his personal services.

He and Mrs. Wodehouse went out to Hollywood then and stayed out there for nearly a year. I think they got another short contract from another motion picture company. While he was there his agent, whose name was Stevens, was representing him on a commission basis. Mr. and Mrs. Wodehouse returned here the following year.

*Watson Washburn—for Petitioner—Direct.*

(Transcript, p. 70.)

In the meantime they had written to me that in connection with their income tax return for the year 1936, which had to be filed while they were in Hollywood, they had been told they should report their income on a community property basis, that being the California law.

I advised them, if my recollection is correct—they said they had come in under a quota visé which they thought made them residents—I told them that in my opinion, since they were only in Hollywood for business, it was doubtful whether they were residents there or domiciled there for community property purposes, but if, as I had assumed, they were residents of France, I believed that the French law as to community property was the same as California; so that I think their original returns for that year were prepared on a community property basis.

When they came back here in the fall of 1937, they came to see me again and they raised the question of their community property position, and chiefly of their residence or domicile. I told them that I didn't think—that they should really consult their counsel in England where they certainly had originally been domiciled and possibly in France before I could give them very much help, although I tried to explain to them the various elements of the domicile or residence.

(Transcript, p. 71.)

They then told me that they had never had any—I believe I asked them whether they had any special arrangement whereby they were not to have community property because I said that even in community property jurisdictions—I understood if the parties had a contrary agreement that law didn't apply, and they said they had no such agreement, and that actually they had a joint



*Watson Washburn—for Petitioner—Direct.*

account, usually, and had no objection whatever to an equal sharing of their worldly gains.

I believe I then told them that if that was the case, that assuming that the community property—assuming that they were not domiciled in a community property jurisdiction that in my opinion if the petitioner wished to give his wife half of whatever he might have of his property that he probably could achieve the same result as the community property jurisdiction by making a present to her of a half interest in his writings, if he did so before any income was realized from them.

He said that was perfectly agreeable to him, and he suggested, as I recall it, that after he got back to Europe and had a chance to consult with his counsel there, that I should prepare and send him a form of assignment that would cover the matter which we discussed.

(Transcript, p. 72.)

Q. What was the next you heard from the petitioner?

A. The next that I recall having heard from him was, or from his wife—one or the other would write to me, sometimes one and sometimes the other—that their English barrister had told them that they were certainly not residents of France, or at least, certainly not domiciled in France, but were domiciled in England.

Q. Did you, on receipt of that information, make any change—what did you do about their income tax returns previously filed on a community property basis?

A. I prepared amended returns on a separate property basis in which Mr. Wodehouse reported all the income from his Hollywood contracts himself and Mrs. Wodehouse none.

Q. What was done regarding the payment of the taxes?

A. Mr. Wodehouse paid whatever additional tax was required, as I recall, and Mrs. Wodehouse applied for a

*Watson Washburn—for Petitioner—Direct.*

refund of the tax which she paid under one-half of the salary.

Q. Did you receive any assignments from Mr. Wodehouse thereafter of an interest in his writings, in any of his writings to his wife?

A. I did. I received the assignments which were referred to in the testimony of Mr. Reynolds earlier this afternoon.

Q. When did you receive those assignments and what did you do with them?

(Transcript, p. 73.)

A. I received on January 12th, 1938, a letter dated January 3rd, 1938, from Mrs. Wodehouse, enclosing an original assignment which I would like to offer in evidence. Petitioner's Exhibit 1 is what I received on January 12th, 1938.

Q. What did you do upon the receipt of that assignment?

A. I sent it to Mr. Reynolds with a letter, a copy of which is Petitioner's Exhibit 2.

Q. Did you receive any further assignments from Mr. Wodehouse to his wife?

A. On October 15th, 1938, I received an assignment signed by Mr. Wodehouse, and also signed by Ethel Wodehouse, in the form of an agreement, assigning a one-half interest to Mrs. Wodehouse in Mr. Wodehouse's work, "Uncle Fred in the Springtime."

I would like to offer this in evidence.

Mr. Mandry: No objection.

The Court: Petitioner's Exhibit 9.

(Agreement of 9/1/38 was received in evidence and marked Petitioner's Exhibit 9.)

*Watson Washburn—for Petitioner—Direct.*

By Mr. Washburn:

Q. Did you take any action upon receipt of that assignment?

(Transcript, p. 74.)

A. I wrote to Mr. Reynolds the original letter of which Exhibit 5 has been received in evidence.

Q. Did you receive any further assignments from Mr. Wodehouse to Mrs. Wodehouse of literary rights in the year 1940?

A. I received on January 2nd, 1940, a letter from Mr. Wodehouse dated December 1, 1939, enclosing an assignment of a half share in his new novel "Quick Service" to his wife.

Q. What did you do upon the receipt of that assignment?

A. I wrote to Mr. Reynolds the letter of which a copy was admitted in evidence as Petitioner's Exhibit 6.

Q. Did you send copies of your letters to Mr. Reynolds, the last three copies to which you have testified, to any other persons?

A. I sent to Mrs. Wodehouse a copy of my letter of January 12th, 1938, to Mr. Reynolds, Petitioner's Exhibit 2, and I sent to Mr. Wodehouse a copy of my letter of January 2nd, 1940, to Mr. Reynolds, Petitioner's Exhibit 6.

Q. Have you a copy or the original assignment of December 31st, 1939?

A. I do not seem to find it among these papers, but I will try and locate it by tomorrow morning and produce it then.

**Watson Washburn—for Petitioner—Cross:**

(Transcript, p. 91.)

Q. When Mr. Wodehouse and his wife came to the United States in 1936 and went to Hollywood, you stated that they filed their return on the community property basis?

A. That is to the best of my knowledge, the original return.

Q. And it was subsequent to the due date that the amended returns were filed for each one?

A. I think that is correct.

Q. Did you prepare those amended returns?

(Transcript, p. 92.)

A. I think so.

Q. It was following that discussion with Mr. Wodehouse with respect to the division of the income on the community property basis that you advised him the same result could be accomplished by executing an assignment to his wife?

A. I think it was a year later. It was the following year when he was coming back from California with his wife.

Q. In the year 1937?

A. Toward the end of 1937.

Q. And you prepared a form of assignment?

A. Yes.

Q. Was that merely a draft to be used or an actual form to be executed by the petitioner?

A. I think it was a perfectly valid assignment.

Q. I am not asking you that. I am asking you about the preparation of the assignment.

A. Are you asking me whether the assignments which had been offered in evidence had been typed in my office or drafted by me?

*Watson Washburn—for Petitioner—Cross.*

Q. Yes.

A. May I look at them? I think that the assignment dated January 3rd, 1938 was drafted by me. The assignment dated—that is Exhibit 1—the assignment dated September 1st, 1938, wasn't drafted by me. Those seem to be the only two that I find here. One was drafted by me and one was not.

(Transcript, p. 93.)

Q. Did Mr. Wodehouse pursue this method of making assignments to his wife during the year 1939?

A. He did, to some extent, at least. He may have assigned a half interest in three or four stories to his wife in 1939.

Q. In your discussions with Mr. Wodehouse in 1937, you said that he told you that he and Mrs. Wodehouse had a joint bank account, is that true?

A. That is true.

Q. And that all of their worldly property belonged equally to each?

A. I won't say that he phrased it in quite that language. He said he had no objection to giving her half his worldly goods, or words, substantially so.

Q. My recollection is of your testimony that Mr. Wodehouse said that there was an equal sharing of worldly gains?

A. He said as a practical matter he and his wife were a very united couple, and he didn't mind her having a half interest in everything he had. That is my best recollection. As a matter of fact, he didn't know whether she already had a half interest in all his gains, because he didn't know whether he was under a community property jurisdiction or not.



*Watson Washburn—for Petitioner—Cross.*

(Transcript, p. 94.)

Q. You are speaking of the time he was in California?

A. The time he talked with me in 1937, with Mrs. Wodehouse.

Q. He was merely concerned then with respect to his taxable income during the year 1936, was he not, as to whether it should be reported on a community basis?

A. He was in doubt as to whether he was on a community basis or not, because he didn't know where he was legally domiciled or resident.

Q. But that would not affect his tax liability for the years after 1937, when he was returning to England?

A. He was returning to France and France has a community property law unless the parties agree otherwise, I so thought at the time; and it is still my opinion.

Q. He had lived in France for many years prior to 1936, had he not?

A. Yes.

Q. In your handling of his tax cases from 1925 to 1933 you didn't contend that he was under the community property basis while he was a resident of France, did you?

A. I am not sure they lived in France as early as 1933. He was living there immediately before 1936. He came over here from France, but the point had never come to my attention in the course of the 1925 to 1932 controversy.

**Paul R. Reynolds—for Petitioner—Recalled—Direct:**

(Transcript, p. 105.)

**PAUL R. REYNOLDS,**

recalled, further testified as follows:

The Court: The oath that you have taken obtains throughout the hearing.

Direct examination by Mr. Washburn:

Q. Mr. Reynolds, have you found the original letters from my firm that you referred to in your testimony yesterday, dated December 1, 1938?

A. I don't know whether I found them all.

(Transcript, p. 106.)

Q. Will you produce them?

A. Yes.

Mr. Washburn: This is the original letter dated January 12, 1938. May I suggest that I show them to Mr. Mandry, and if he is satisfied the copies will be let in?

The Court: The copies have already been marked and so there is no need for these.

(Transcript, p. 107.)

The Court: Do you have any questions?

Mr. Mandry: No.

The Witness: Don't you want me to answer the questions I couldn't answer yesterday?

Mr. Mandry: He did say he would bring back some cards as to 1938 and 1940.

The Witness: Yes, and correspondence which would determine more accurately the dates of delivery. These are the three stories. I said it was from his secretary.

*Paul R. Reynolds—for Petitioner—Recalled—Cross.*

(Transcript, p. 108.)

Cross examination by Mr. Mandry:

Q. Suppose we start out with "The Cow Creamer", in 1938 what does your card show with respect to that?

A. The card shows part of the story delivered to the Post October 22nd, and the balance of the story was delivered February 5th, the next year, sold February 19th, and we were paid February 23, 1938.

Q. With respect to the disposition of the funds which are set forth in Exhibit 4, I notice there is a check made out to the Bank of Manhattan Company for \$34,200, signed by you. What was that check for?

A. That was in payment for a serial, "The Silver Cow" less income tax withheld and commission, and probably other charges.

Q. Just tell me the history of that. It says payable to the order of the Bank of Manhattan Company.

A. We wrote a letter to the Bank and enclosed this check, and asked them to send a draft to Mr. Wodehouse and to Mrs. Wodehouse.

Q. With respect to "Uncle Fred in the Springtime," in 1938, what do your cards now show with respect to that?

A. Part of the story was received in September 1938 or offered to the Post in September 1938, and the conclusion in October, and then he had to do some revision. They wanted some changes in the story. They received the balance of the story December 6th, and bought it December 31st. If the dates of delivery are important to you—

(Transcript, p. 109.)

Q. What do you mean, the dates of delivery?

A. These cards show the dates we offered them to the Post, and you were quizzing me yesterday as to whether our office received it.

Q. That is right.

*Paul R. Reynolds—for Petitioner—Recalled—Cross.*

A. This is a note from a typewriting bureau in London. It says, "Sent on the instructions of Mr. P. G. Wodehouse."

Q. What is that date?

A. September 6th, 1938.

Q. What story does it relate to?

A. In my father's handwriting it was "Uncle Fred in the Springtime."

Q. It would have been received, perhaps in installments?

A. Yes, in three installments.

Q. With respect to "Quick Service," in 1940, what do your cards show about that?

A. "Quick Service" went to the Post on January 11th, 1940, sold to the Post January 16th, 1940, paid for January 17th, 1940.

Q. Do you have any other record with respect to that story showing when you received it from the petitioner?

(Transcript, p. 110.)

A. I brought over all the correspondence of 1937 and 1938, but for 1940, I probably have the same as the others. Wodehouse is an important client, and we read the story over immediately, and it went immediately to the Post, and no one else. In other words, we received it approximately January 10th.

Q. With respect to all three of those stories, who took out the copyrights on them?

A. Saturday Evening Post.

Q. Does the usual contract for the sale of these stories to the Saturday Evening Post—is there an agreement that they will retransfer the copyrights back?

A. The copies of the agreement with the Post I think are in the exhibits. They agreed to assign the rights, and I believe the lawyers disagree as to whether it is a valid assignment of copyright.

Q. But that is what they do?

A. Yes, after they use the story they assign all the rights except the rights they retain.

*Paul R. Reynolds—for Petitioner—Recalled—Cross.*

Q. Do your records show as to whether the Curtis Publishing Company ever assigned the copyrights back?

A. Yes, and we would have them—

Mr. Washburn: I think the Post's contracts are in evidence, and therefore this testimony is unnecessary, and I, therefore, object to it, and move to strike out anything the witness may have said as to the legal effect of the agreement which is in evidence.

(Transcript, p. 111.)

Mr. Mandry: The evidence is in there, but I also asked him as to who took out the copyrights.

The Witness: The Curtis Publishing Company.

By Mr. Mandry:

Q. Did the Curtis Publishing Company assign those copyrights to anyone else?

A. No, they would assign them to no one but the author.

Q. Did they do that?

A. Whenever we asked them to, and I would have to check in each individual case whether we asked them to.

Q. Do you have your records here that would show that?

A. No. I have seen one assignment of copyright. It is a regular form, and the custom in the magazine business is to universally re-assign the rights after the magazine has exercised them. I think, Mr. Washburn, it was in the papers I had yesterday. He wanted to see a reassignment of the right of a story purchased by the Post. It may be in these papers, but you could show the assignments.

By Mr. Mandry:

Q. Could you show me assignments with respect to these three stories?



*Paul R. Reynolds—for Petitioner—Recalled—Cross.*

Mr. Washburn: What is the purpose of this?

(Transcript, p. 112.)

Mr. Mandry: The purpose of it is that we have here an alleged assignment by the petitioner to his wife with respect to all the property rights in the literary products after it is sold to a magazine with the right in the contract for reassignment of copyright to the author, and I want to find out where those copyrights finally ended up. Unfortunately the witness does not seem to have any records with him.

The Witness: If you would have let me know what you wanted in advance, I feel sure that there were assignments in all three, and we have them.

By Mr. Mandry:

Q. Whom do you think they were made to?

A. They are always made to the author.

\* \* \*

*Paul R. Reynolds—for Petitioner—Recalled—Direct.*

(Transcript, p. 119)

\* \* \*

By Mr. Washburn:

Q. Mr. Reynolds, approximately when were the three long novels written by Mr. Wodehouse, which you have testified to here in the last two days? Were they published shortly after you made the contracts for them?

A. Yes, I think within six months. I think it is shown in the cards.

*Paul R. Reynolds—for Petitioner—Recalled—Direct.*

Q. All right, tell us when they were published.

A. Uncle Fred in the Springtime, April 22nd to May 27th.

The Court: What year?

The Witness: 1939. The Silver Cow, July 9th, 1939, to September 3rd, 1939. Quick Service, March 4th, 1940, to June 22nd, 1940.

By Mr. Washburn:

Q. And the short story published in Cosmopolitan, was that published shortly after you sold it?

A. I think so.

Q. That is the story referred to in this letter, contract of July 23rd, 1941, which I now hand you?

A. Yes.

(Transcript, p. 120.)

Mr. Washburn: I offer it in evidence.

Mr. Mandry: No objection.

The Court: Petitioner's Exhibit 15.

(Letter, 7/23/41, was marked as Petitioner's Exhibit 15 and received in evidence.)

By Mr. Washburn:

Q. I hand you a paper which purports to be the contract with the Saturday Evening Post, for Money in the Bank, dated August 12th, 1941. Is that the original of that paper?

A. Yes.

Mr. Washburn: I offer it in evidence.

Mr. Mandry: No objection.

The Court: Petitioner's Exhibit 16.

*Paul R. Reynolds—for Petitioner—Recalled—Direct.*

(Contract, 8/12/41, was marked as Petitioner's Exhibit 16 and received in evidence.)

By Mr. Washburn:

Q. Mr. Reynolds, you heard the testimony of the gentleman from the circulation magazine. Are you familiar with that magazine?

A. Liberty?

Q. No, the magazine which gives circulation figures.

A. Very generally, I have heard of it.

Q. Standard Rate and Data Service it is called. Assuming, Mr. Reynolds, that the circulation of the Saturday Evening Post in the United States was approximately 94 per cent of its total circulation and that its circulation outside of the United States was approximately 6 per cent, in your opinion, would the approximate value of the rights outside the United States bear that same relation, the first serial rights, to the rights within the United States?

(Transcript, p. 121.)

Mr. Mandry: I object, your Honor. In the first place, the contracts are for the purchase of the rights, without any allocation at all. And if the parties could not allocate as to their contract then it cannot be done by this method. Second, that the witness is not qualified.

He testified he is his literary agent and sold stories; and yesterday he also testified, as I recall it, that while he had sold to a few magazines in Canada, he had not sold the same stories separately in the United States and in Canada. That was my recollection of his testimony, and I don't think he is qualified to testify as to the value to the Curtis Publishing Company as to the stories they purchased from the petitioner.

*Paul R. Reynolds—for Petitioner—Recalled—Direct.*

Mr. Washburn: In the first place, he testified yesterday that no one sold the same story to the two countries separately.

The Court: He may answer.

(Transcript, p. 122.)

The Witness: Except in very rare circumstances.

By Mr. Washburn:

Q. You may answer the original question.

A. Can you read it to me?

(Question read.)

The Witness: If you mean could we have sold a Wodehouse story in Canada if we had been unable to sell it in the United States, yes, we could have.

By Mr. Washburn:

Q. I didn't quite hear that.

A. If I had a new Wodehouse story, could I have sold it in Canada or could I have seven years ago; yes, I could have. I have an idea about the maximum I could get.

Q. I don't think that is an answer to my question.

The Court: I believe the witness has—

Mr. Washburn: May I rephrase it?

The Court: You may rephrase it.

By Mr. Washburn:

Q. Mr. Reynolds, assuming that the rights—that the Saturday Evening Post has a circulation outside the

*Paul R. Reynolds—for Petitioner—Recalled—Direct.*

United States of approximately 6 per cent of its total circulation. In your opinion, is the value of the rights of the *Saturday Evening Post*, in a serial novel of P. G. Wodehouse, equal to approximately 6 per cent of the total price which it is worth to the *Saturday Evening Post*?

(Transcript, p. 123.)

A. I suppose so. The *Post* would not have bought it without the Canadian rights. They wouldn't, because they couldn't keep their magazine out of Canada. As to the value, that would seem to be up to you lawyers. It's certainly a value.

Q. Have you any opinion about it as an expert literary agent?

A. I can tell you the maximum that I think the Canadian magazine would have paid.

Q. What would a Canadian magazine have paid for the Wodehouse serial rights?

A. The most leading magazine in Canada, the most, the editor told me, he ever paid was \$2,000 as a maximum. The most I have ever sold to a Canadian magazine was \$1500.

Q. Has any author of as good value as P. G. Wodehouse been sold to a Canadian magazine without including the United States?

A. No.

Mr. Mandry: No questions.

The Court: You are excused.



# **Petitioner's Exhibit 1.**

(Cert. Tr. Rec. on Rev., p. 124.)

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, PELHAM G. WODEHOUSE, being the author of a certain original unpublished novel in manuscript, consisting of        typewritten pages, entitled "The Cow-Creamer", does hereby assign, transfer and set over unto his wife, ETHEL WODEHOUSE, an undivided one-half interest in all his literary property, right, title and interest in and to said manuscript, including all profits that may arise from copyrighting the same throughout the world and from printing, publishing and selling the same in serial or book form and in newspapers and magazines, including all dramatic, radio, motion picture, either silent or talking, and television rights of every nature and description throughout the world, said undivided one-half interest to be hers in perpetuity.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 3rd day of January, 1938.

P. G. WODEHOUSE (L. S.)

Witnesses:

ILLEGIBLE

Lloyds & National Provincial Foreign Bank Limited  
59, Rue St. Jean, LE TOUQUET PARIS PLAGE  
Bank Manager

## Petitioner's Exhibit 2.

(Cert. Tr. Rec. on Rev., p. 125.)

PERKINS, MALONE & WASHBURN  
ATTORNEYS AT LAW

Bar Building—36 West 44th Street

New York, January 12, 1938.

Mr. Paul R. Reynolds, Jr.,  
599 Fifth Avenue,  
New York, N. Y.

Dear Mr. Reynolds:

I received a letter from Siva, dated December 31, 1937, stating that "Siva has transferred back to Mr. P. G. Wodehouse all his copyrights."

I also received this morning from Mr. Wodehouse an assignment from him to Mrs. Wodehouse of an undivided one-half interest in all his literary rights in his new novel, "The Cow-Creamer".

Accordingly, payments on all Mr. Wodehouse's writings, except "The Cow-Creamer", should be made to Mr. Wodehouse, beginning January 1, 1938; and any contracts which you make, or payments which you receive relating to "The Cow-Creamer" must be made for the joint benefit of Mr. and Mrs. Wodehouse.

Sincerely yours,

WATSON WASHBURN.

WW:OL

**Petitioner's Exhibit 3.**

(Cert. Tr. Rec. on Rev., p. 126.)

**PERKINS, MALONE & WASHBURN**  
ATTORNEYS AT LAW

Bar Building—36 West 44th Street

New York, February 24, 1938.

Mr. Paul R. Reynolds, Jr.,  
599 Fifth Avenue,  
New York, N. Y.

Re: P. G. Wodehouse

Dear Mr. Reynolds:

I enclose for your information and files photostat of the assignment from Mr. P. G. Wodehouse to Mrs. Wodehouse of a one-half interest in "The Cow-Creamer", the name of which, I understand, has been changed to "The Silver Cow".

Very truly yours,

H. MALONE

HM:OL  
Enclosure

**Petitioner's Exhibit 4.**

(Cert. Tr. Rec. on Rev., pp. 127, 128, 129.)

**THE CURTIS PUBLISHING COMPANY**

INDEPENDENCE SQUARE

PHILADELPHIA

February 22, 1938

Paul R. Reynolds, & Son  
599 Fifth Avenue  
New York City

We inclose herewith  
our check Forty Thousand Dollars

in payment for.

Serial: The Silver Cow

By P. G. Wodehouse

\$40,000.00

**IMPORTANT**

This check is offered and accepted with the understanding that The Curtis Publishing Company buys all rights in and of all stories and special articles appearing in its publications and with the further understanding that every number of these publications in which any portion thereof shall appear shall be copyrighted at its expense. After publication in a Curtis periodical is completed it agrees to reassign to the author on demand all rights, except American (including Canadian and South American) serial rights.

**MOTION PICTURE RIGHTS**

Please note that our reservation of serial rights (which includes publication in one installment) includes new story versions based on motion-picture or dramatic scenarios of short stories and serials that have appeared in Curtis publications, and that we permit the use of such versions

*Petitioner's Exhibit 4.*

only under the following conditions: Such synopsis, scenario, or new story version shall not exceed fifteen hundred (1500) words in length when based on a short story appearing complete in one issue, or five thousand (5000) words when based on a serial appearing in two or more issues, or a series of not less than three connected short stories from which a single picture is to be made. Such synopsis shall appear only in circular matter, press books, press notices, trade journals and in magazines devoted exclusively to dramatic or motion-picture matter, and shall in no event appear as having been written by the author. When selling motion-picture or dramatic rights of matter, you must notify the producer to this effect, so that there may be no misunderstanding on his part and no infringement of our rights.

THE CURTIS PUBLISHING COMPANY

52

PAUL R. REYNOLDS & SON

599 Fifth Avenue

New York March 1, 1938 No. 16973

Pay to the order of Bank of the Manhattan Co.  
\$34,200 00/100 exactly Thirty-four Thousand Two Hundred  
Dollars no cents exactly Dollars.

PAUL R. REYNOLDS, JR.

B

Chartered 1799

BANK OF THE MANHATTAN COMPANY  
Madison Avenue at 43rd Street  
New York

R



*Petitioner's Exhibit 4.*

March 1, 1938

Gentlemen:

We enclose check for \$34,200 for which please send us drafts on Calais, France in U. S. dollars payable to

P. G. Wodehouse \$17,100.

Ethel Wodehouse 17,100

Yours sincerely,

Bank of the Manhattan Company  
Madison Avenue at 43rd Street  
New York City.

PR:ML

March 3, 1938

P. G. Wodehouse

in account with

Paul R. Reynolds &amp; Son

Received from Saturday Evening Post for  
All American, Canadian & South American  
serial rights to

THE SILVER TOW

\$40,000

Commission 5%

2,000

\$38,000

U. S. Income Tax 10%

3,800

\$34,200

Ethel Wodghouse share 1/2

17,100

Draft herewith

\$17,100

*Petitioner's Exhibit 4.*

March 3, 1938

Ethel Wodehouse

in account with

Paul R. Reynolds &amp; Son

Received from Saturday Evening Post for  
All American, Canadian & South American  
serial rights to

THE SILVER COW

\$40,000.

Commission 5%

2,000.

\$38,000.

U. S. Income Tax 10%

3,800.

\$34,200.

P. G. Wodehouse share  $\frac{1}{2}$ 

17,100.

Draft herewith.

\$17,100.

**Petitioner's Exhibit 5.**

(Cert. Tr. Rec. on Rev. p. 136.)

October 15, 1938

Mr. Paul R. Reynolds, Jr.,

Messrs. Paul R. Reynolds &amp; Son,

50 Fifth Avenue,

New York, N. Y.

Dear Mr. Reynolds:

Mr. Wodehouse has sent to me the original of an assignment dated September 1st, 1938, from him to his wife, Ethel Wodehouse, of a one-half share in the manuscript and copyright of his new work entitled "Uncle Fred in the Springtime."

*Petitioner's Exhibit 5.*

He asked me to notify you of the fact of the assignment. Accordingly, in case you should have any dealings regarding this work, you should bear in mind that Mr. and Mrs. Wodehouse each owns a one-half interest in it.

Sincerely yours,

WATSON WASHBURN.

WW:OL

**Petitioner's Exhibit 8.**

(Cert. Tr. Rec. on Rev., pp. 131-134.)

September 16, 1938

Dear Wodehouse:—

Your new story, entitled UNCLE FRED IN THE SPRING-TIME, came in yesterday and I read it part of yesterday afternoon and finished it last night. Then Brandt came into the office this morning and we gave it to him. He asked me if I knew when they would get the balance of it and I said I didn't know but I supposed shortly.

The way you quote verses and different quotations; giving them always a humorous twist, always makes me laugh. I couldn't help laughing when Horace was telling how Ricky jumped off the back of his auto and when he was asked if it didn't give him a start, "yes", he said, "a flying start."

I think the Post will enjoy reading it as much as I did, and, of course, we shall let you know what they say as soon as we hear from them.

I doubt if we can get from the Post a larger price for this story than we did for the last one. Editors are complaining that their advertising is not what it should be.

*Petitioner's Exhibit 8.*

that they are feeling very much what has been called the recession, and we find with other authors that they are not getting the prices they did some time ago. I hope, however, we can make a deal with the Post that will seem to you satisfactory in every way.

Yours sincerely,

P. G. WODEHOUSE, Esq.,

Low Wood

Le Touquet

France

PR:B

EDITORIAL ROOMS

THE SATURDAY EVENING POST  
THE CURTIS PUBLISHING COMPANY

WESLEY WINANS STOUT, EDITOR

PHILADELPHIA

OCT 15 1938

October 14, 1938

Dear Mr. Reynolds:

We have read the balance of the new Wodehouse serial, UNCLE FRED IN THE SPRINGTIME, and like it, but I am going to ask your indulgence for a few days. Several of us feel that the story, although it is a very good one, needs a certain amount of clarification in the early sections, but I am not at all sure that Mr. Stout shares this feeling and I'd like to hold the manuscript against his return next week rather than to buy it now. I hope this will be all right with you.

Sincerely,

STUART BOSS

Mr. Paul Reynolds, Sr.

SR:MEM

*Petitioner's Exhibit 8.*

EDITORIAL ROOMS

THE SATURDAY EVENING POST  
THE CURTIS PUBLISHING COMPANY

WESLEY WINANS STOUT, EDITOR

PHILADELPHIA

Dec 13 1938

December 12, 1938

Dear Paul:

Glad to tell you we liked the revision of the Wodehouse story, UNCLE FRED IN THE SPRING TIME, and are keeping it for The Post. A check for \$40,000.00 will be forwarded. Next Friday, I will talk to you about his next one.

Sincerely,

ERD

Mr. Paul Reynolds, Jr.

EB:CS



*Petitioner's Exhibit 8.*

**THE CURTIS PUBLISHING COMPANY**

INDEPENDENCE SQUARE  
Philadelphia

December 13, 1938

Paul R. Reynolds & Son  
599 Fifth Avenue  
New York City

We inclose herewith our check  
in payment for

Forty Thousand Dollars  
Serial: Uncle Fred In the  
Springtime

\$40,000.00

By P. G. Woodhouse

**IMPORTANT**

This check is offered and accepted with the understanding that The Curtis Publishing Company buys all rights in and of all stories and special articles appearing in its publications and with the further understanding that every number of these publications in which any portion thereof shall appear shall be copyrighted at its expense. After publication in a Curtis periodical is completed it agrees to reassign to the author on demand all rights, except American (including Canadian and South American) serial rights.

**MOTION-PICTURE RIGHTS**

Please note that our reservation of serial rights (which includes publication in one installment) includes new story versions based on motion-picture or dramatic scenarios of short stories and serials that have appeared in Curtis publications, and that we permit the use of such versions only under the following conditions: Such synopsis, scenario, or new story version shall not exceed fifteen hundred (1500) words in length when based on a short

*Petitioner's Exhibit 8.*

story appearing complete in one issue, or five thousand (5000) words when based on a serial appearing in two or more issues, or a series of not less than three connected short stories from which a single picture is to be made. Such synopsis shall appear only in circular matter, press books, press notices, trade journals and in magazines devoted exclusively to dramatic or motion-picture matter, and shall in no event appear as having been written by the author. When selling motion-picture or dramatic rights of matter, you must notify the producer to this effect, so that there may be no misunderstanding on his part and no infringement of our rights.

THE CURTIS PUBLISHING COMPANY

PAUL R. REYNOLDS & SON  
599 Fifth Avenue

52

New York Dec. 19, 1938 No. 17977

Pay to the  
order of Bank of the Manhattan Co. \$34,083.31/100  
Exactly Thirty Four Thousand Eighty Three Dollars  
Thirty One Cents Exactly Dollars

PAUL R. REYNOLDS, JR.

Chartered 1799

BANK OF THE MANHATTAN COMPANY R  
Madison Avenue at 43rd Street  
New York

## Petitioner's Exhibit 8.

December 19, 1938

Gentlemen:

We enclose check for \$34,083.31 for which please send us drafts on Calais, France in dollars payable to

Ethel Wodehouse \$17,000.00

P. G. Wodehouse 17,083.31

Yours sincerely,

Bank of the Manhattan Co.  
Madison Avenue at 43rd Street  
New York City

RR:ML

December 19, 1938

Ethel Wodehouse

in account with

Paul R. Reynolds &amp; Son

Received from Saturday Evening  
Post for all American, Canadian  
and S. American serial rights to  
UNCLE FRED IN THE SPRINGTIME

\$40,000.

Commission 5% \$2,000.

U. S. Income Tax 10% 4,000.

6,000.

34,000.

P. G. Wodehouse, share, 1/2 17,000.

Draft herewith

\$17,000.

Petitioner's Exhibit 8.

December 21, 1938

P. G. Wodehouse

in account with

Paul R. Reynolds & Son

Received from

Bell Syndicate for sale on IF I  
WERE YOU

\$ 3.75

McGraw-Hill Book Co. for right to  
reprint FAREWELL TO LEGS in  
Modern Short Stories

50.00

Ryerson Press—reprint use of THE  
CUSTODY OF THE PUMPKIN

25.00 \$ 78.75

Commission 5%

3.93

U. S. Income Tax 10%

7.87

11.80

\$ 66.95

Dodd, Mead and Company—royalty  
to Aug. 1, 1938 on PICEADILLY JIM

19.25

Commission 5%

\$ .96

U. S. 10% Income Tax

withheld by Dodd, Mead 1.93

2.89

16.36

Saturday Evening Post—All American,  
Canadian and S. American  
serial rights to UNCLE FRED IN  
THE SPRINGTIME

40,000.00

Commission 5%

2,000.

U. S. Income Tax 10%

4,000.

6,000.00

34,000.00

1/2 to Ethel Wodehouse

17,000.00 17,000.00

Draft herewith

\$17,083.31



**Petitioner's Exhibit 9.**

(Cert. Tr. Rec. on Review, pp. 135-136.)

DATED 1ST SEPTEMBER 1938

P. G. WODEHOUSE ESQ.

—to—

MRS. E. WODEHOUSE

---

ASSIGNMENT

---

AN AGREEMENT made the first day of September One thousand nine hundred and thirty-eight BETWEEN PELHAM GRENVILLE WODEHOUSE of Low Wood Le Touquet in the Republic of France (hereinafter called "Mr. Wodehouse") of the one part and ETHEL WODEHOUSE the wife of the said Pelham Grenville Wodehouse of Low Wood Le Touquet aforesaid (hereinafter called "Mrs. Wodehouse") of the other part WHEREAS Mr. Wodehouse is the author of certain works and manuscript entitled "Uncle Fred in the Springtime" which has not been published And Whereas Mr. Wodehouse has agreed with Mrs. Wodehouse to assign to her one-half share or interest in the said manuscript and the copyright therein.

NOW IT IS HEREBY AGREED between the parties hereto as follows:—

1. In consideration of the natural love and affection of Mr. Wodehouse for his wife Mr. Wodehouse hereby assigns to Mrs. Wodehouse one-half share or interest in the copyright in the said works and the property in the manuscript.



*Petitioner's Exhibit 9.*

2. MR. WODEHOUSE warrants that he is the owner of the said manuscript and the copyright therein

AS WITNESS the hands of the parties hereto.

**PELHAM GRENVILLE WODEHOUSE**

SIGNED by the said Pelham  
Grenville Wodehouse in the  
presence of:—

CYRIL BLACKHORN

**ETHEL WODEHOUSE**

SIGNED by the said Ethel  
Wodehouse in the presence  
of:—

M. WHITELAW  
Villa Georgette  
21 rue des Vormands  
Paris Plage (P. d. C)

**Designated Portion of Petitioner's Exhibit 14.**

(Cert. Tr. Rec, on Rev. pp. 137-140.)

(Same as Petitioner's Exhibit 5.)

## Petitioner's Exhibit 15.

(Cert. Tr. Rec. on Rev., p. 141.)

### HEARST'S INTERNATIONAL COSMOPOLITAN

Hearst Magazine Building  
Fifty-seventh Street and Eighth Avenue  
New York City

July 23, 1941

Jul 24 1941

Mr. Paul R. Reynolds, Sr.  
599 Fifth Avenue  
New York City

Dear Mr. Reynolds:

THIS will confirm our purchase of the article entitled MY YEAR BEHIND BARBED WIRE by P. G. Wodehouse for Two Thousand Dollars (\$2,000.00). We are buying all American and Canadian serial rights (which include all American and Canadian magazine, digest, periodical and newspaper publishing rights).

It is understood and agreed that the author, and you as his agent, will not use or permit the use of this article or any part or parts thereof (1) in any manner or for any purpose until thirty (30) days after magazine publication and (2) in connection with or as the basis for any motion and/or talking picture(s), radio broadcast(s); television, dramatic production(s) or public performance(s) throughout the world unless the words "Based on (or taken from) literary material originally published in Cosmopolitan" immediately precede or follow or otherwise accompany the title of any and all such motion and/or talking pictures, radio broadcasts, telecasts, dramatic productions or public performances.

*Petitioner's Exhibit 15.*

Your signature hereon will constitute an agreement between us.

Sincerely yours,

FRANCES WHITING  
FRANCES WHITING

ACCEPTED:

DATE:

I am accepting the above letter on the condition that publication of this article can be released in England simultaneously with publication in *Cosmopolitan Magazine* (despite the wording of (1) in the second paragraph); with the further understanding that *Cosmopolitan* will permit no digest or newspaper publication of this article without the consent of the author or his agent in writing; and with the further condition that we receive payment not later than September 1, 1941.

**Petitioner's Exhibit 16.**

(Cert. Tr. Rec. on Review, p. 142.)

**THE CURTIS PUBLISHING COMPANY,**  
**INDEPENDENCE SQUARE**  
**PHILADELPHIA**

12 August 1941

Paul R. Reynolds & Son  
 599 Fifth Ave.  
 New York, N. Y.

Forty Thousand Dollars

We inclose herewith our check  
 in payment for  
 \$40,000.00

Serial: **MONEY IN THE BANK**  
 by P. G. Wodehouse

**IMPORTANT**

This check is offered and accepted with the understanding that The Curtis Publishing Company buys all rights in and of all stories and special articles appearing in its publications and with the further understanding that every number of these publications in which any portion thereof shall appear shall be copyrighted at its expense. After publication in a Curtis periodical is completed it agrees to reassign to the author on demand all rights, except North American (including Canadian) serial rights.

**MOTION-PICTURE RIGHTS**

Please note that our reservation of serial rights (which includes publication in one installment) includes new story versions based on motion-picture or dramatic scenarios of short stories and serials that have appeared in Curtis publications, and that we permit the use of such versions only under the following conditions:

*Petitioner's Exhibit 16.*

synopsis, scenario, or new story version shall not exceed fifteen hundred (1500) words in length when based on a short story appearing complete in one issue, or five thousand (5000) words when based on a serial appearing in two or more issues, or a series of not less than three connected short stories from which a single picture is to be made. Such synopsis shall appear only in circular matter, press books, press notices, trade journals and in magazines devoted exclusively to dramatic or motion-picture matter, and shall in no event appear as having been written by the author. When selling motion-picture or dramatic rights of matter, you must notify the producer to this effect, so that there may be no misunderstanding on his part and no infringement of our rights.

THE CURTIS PUBLISHING COMPANY



**Respondent's Exhibit G.**

(Cert. Tr. Rec. on Review, pp. 147-148.)

**MEMORANDUM**

This is to certify that the attached photostat is a true copy of the Assessment List of the jeopardy assessment for the year 1938 assessed against Pelham G. Wodehouse, c/o Perkins, Malone & Washburn, 36 West 44th Street, New York, N. Y. appearing on the records of the Third District of New York.

The assessment for the year 1938 appears on the Commissioner's List 1944 under Account No. June-04 Special #1.

This is also to certify that I have the legal custody of the Income Tax records filed in the office of the Collector of Internal Revenue for the Third District of New York.

**JAMES W. JOHNSON**

Collector of Internal Revenue  
Third District of New York

October 18, 1945.

Initials illegible

**ASSESSMENT CERTIFICATE  
COMMISSIONER'S ASSESSMENT LIST**

**THIRD District of NEW YORK Month JUNE SPECIAL #1  
Year 1944**

**Additional Assessments made by Commissioner:**

**Personal—\$49258.14**

**JLD 6-19-43 ROSS**

**CONTROL**

**BILLS 7658 JUN 21 1944**

**CARDS**

**Total Assessments**

**\$49258.14.**

## Respondent's Exhibit G.

I hereby certify that I have made inquiries, determinations, and assessments of taxes, penalties, etc., of the above classification specified in these lists, and find that the amounts of taxes, penalties, etc., stated as corrected and as specified in the supplementary pages of this list made by me are due from the individuals, firms and corporations opposite whose names such amounts are placed, and that the amount chargeable to the collector is as above.

Dated at Washington; D. C.

Office of Commissioner of Internal Revenue, June 14, 1944  
J.G. N.D.C.

JOSEPH D. NUNAN JR  
Commissioner of Internal Revenue

## ASSESSMENT LIST

## INCOME TAX

District Third New York, List June Special #1 1944

	Date	Debit	New Balance	Remarks
Pelham G Wodehouse c/o		2802 08	3180 17	1040 Sub
Perkins Malone & Washburn				273 Rar
	Int	878 09		Int to 6-14-44
36 West 44th St				DL Dec 2 1944
New York N.Y.				
June 00P Spl #1 1941				

Pelham G Wodehouse c/o		12220 86	16069 59	1040 Sub
Perkins Malone & Washburn				273 Rar
	Int	8848 73		Int to 6-14-44
36 West 44th St				DL Dec 2 1944
New York N.Y.				
June 04P Spl #1 1938				

# **Petition for Review.**

(Filed September 8, 1947.)

(Cert. Tr. Rec, on Review, pp. 149-151.)

IN THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Tax Court Docket No. 6487

---

PELHAM G. WODEHOUSE,

Petitioner on review,

—against—

COMMISSIONER OF INTERNAL REVENUE,

Respondent on review.

---

Taxpayer, the petitioner in this case, by Watson Washburn, his counsel and attorney of record, hereby petitions the United States Circuit Court of Appeals for the Fourth Circuit to review the decision of the Tax Court of the United States rendered on June 10, 1947 determining deficiencies in the Federal income tax of petitioner for the calendar years and in the amounts respectively stated as follows:

1938

\$11,806.71

1941

1,854.85

This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the United States Internal Revenue Code.

1. The party seeking the review is the petitioner, Pelham G. Wodehouse.

*Petition for Review.*

2. The taxable periods involved are the calendar years 1938 and 1941.

3. The Court, by which review is sought, is the Circuit Court of Appeals of the United States, Fourth Circuit.

4. The petitioner filed his income tax returns for the taxable years 1938 and 1941 with the Collector of Internal Revenue for the District of Maryland located at Baltimore, Maryland, the office of which Collector is situated within the jurisdiction of the United States Circuit Court of Appeals for the Fourth Circuit, wherein this review is sought.

WATSON WASHBURN

Attorney for Petitioner on review



## Statement of Points.

(Filed October 1, 1947.)

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[SAME TITLE.]

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(Cert. Tr. Rec. on Review, pp. 152-154.)

Now comes Pelham G. Wodehouse, the petitioner on review herein, by his attorney of record and counsel, Watson Washburn, and hereby asserts the following errors which he intends to rely upon in this review:

The petitioner assigns as errors the following acts and omissions of the Tax Court of the United States:

1. The holding and finding that the lump sums received for serial and other rights were periodical royalties subject to tax.

2. The failure to hold and find that said sums received for literary property were not the proceeds of absolute transfers of copyright, and accordingly the proceeds of sales rather than royalties.

3. The failure to hold and find that such sums were not the realization of virtually the entire value of said literary property and accordingly the proceeds of sales rather than royalties.

4. The holding and finding as to the year 1938 that there was no real donative intent in petitioner's assignments of literary property to his wife.

5. The holding and finding as to the year 1939 that the proceeds of such literary property were taxable wholly to petitioner.



*Statement of Points.*

6. The failure to hold and find as to the year 1938 that petitioner was taxable on not more than an undivided one-half interest in such proceeds.

7. The failure to hold and find that respondent's additional assessment for the year 1938 was not barred by the Statute of Limitations.

8. The failure to hold and find that approximately 6% of such payments received for serial and other rights in said property was allocable to the Canadian rights and, therefore, exempt from tax in any event.

9. The failure to find and determine the period during which interest on any deficiency determined against petitioner should be suspended, pursuant to Internal Revenue Code Section 3804, and the amount of interest, if any, properly assessable against petitioner.

10. The determination for the year 1938 of a deficiency of \$11,806.71 instead of an overpayment of \$6,908.76.

11. The determination for the year 1941 of a deficiency of \$1,854.85 instead of an overpayment of \$14,290.12.

WATSON WASHBURN

Attorney for Petitioner on Review

PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE FOURTH CIRCUIT

No. 5694

PELHAM G. WODEHOUSE, PETITIONER

*versus*

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

On Petition to Review the Decision of the Tax Court of the  
United States

November 22, 1947, the transcript of record is filed and the cause docketed.

Same day, certified copy of order extending time to December 5, 1947, for the preparation, transmission and delivery of the record on petition for review is filed.

November 25, 1947, the appearance of Theron L. Caudle, Assistant Attorney General, and Helen R. Carlross, Special Assistant to the Attorney General, is entered for the respondent.

November 28, 1947, the appearance of Watson Washburn is entered for the petitioner.

December 3, 1947, the appearance of Charles Oliphant, Chief Counsel, and Claude R. Marshall, Special Attorney, Bureau of Internal Revenue, is entered for the respondent.

December 5, 1947, statement under section 3 of rule 10 is filed.

December 18, 1947, stipulation to continue case from the January term to the April term, 1948, is filed.

December 30, 1947, brief and appendix on behalf of the petitioner are filed.

January 6, 1948, stipulation as to the time for the filing of the respondent's brief is filed.

January 9, 1948, the appearance of George A. Stinson, Helen Goodner and Melva M. Graney is entered for the respondent.

*Argument of Cause*

January 9, 1948 (January term, 1948) cause came on to be heard before Parker, Soper and Dobie, Circuit Judges, and was argued by counsel and submitted.

January 19, 1948, reply brief on behalf of the petitioner is filed.

Opinion—Filed March 16, 1948

United States Circuit Court of Appeals, Fourth Circuit

No. 5694

PELHAM G. WODEHOUSE, PETITIONER

*versus*

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

On Petition to Review the Decision of the Tax Court of the  
United States

(Argued January 9, 1948. Decided March 16, 1948)

Before PARKER, SOPER and DOBIE, Circuit Judges

Watson Washburn for Petitioner, and Melva M. Grancy, Special Assistant to the Attorney General, (Theron Lamar Caudle, Assistant Attorney General; Sewall Key, George A. Stinson and Helen Goodner, Special Assistants to the Attorney General, on brief) for Respondent.

SOPER, Circuit Judge:

This petition for review seeks a reversal of a decision of the Tax Court which determined deficiencies in income tax of the taxpayer in the amounts of \$11,806.71 for the year 1938 and \$1,854.85 for the year 1941. Pelham G. Wodehouse, the taxpayer, is the well known author of numerous novels, short stories and other literary works. He is a British subject and has resided in England and in France with the exception of a period in 1936 and 1937 when he resided in California. While he was in the United States he was advised by his attorney that he could reduce his income tax liability as to earnings in this country if he would convey to his wife a one-half interest in his writings before any income was realized from them. Accordingly, in 1938, after his return to England, the taxpayer assigned to his wife an undivided one-half interest in two unpublished novels called "The Cow-Creamer" and "Uncle Fred in the Springtime," and he notified his agent in the United States that any contracts and payments for the sale of these novels should be made for the joint benefit of himself and his wife.

On February 22, 1938, the Curtis Publishing Company, publisher of the Saturday Evening Post, accepted "The Cow-Creamer" and sent a check to the taxpayer's agent in the United States for \$40,000 in payment thereof. The agreement of purchase provided that the

Publishing Company purchased all rights in the story appearing in its periodical, and would obtain a copyright on the contents of its magazine, but that after publication therein was completed, it would reassign to the author on demand all rights in the story except the American (including Canadian and South American) serial rights. The Post circulates both in the United States and Canada.

On December 13, 1938, the Curtis Publishing Company accepted the novel "Uncle Fred in the Springtime" on the same terms and for the same consideration as in the case of "The Cow-Creamer."

The money paid by Curtis for the rights in these two novels was transmitted to the taxpayer's agent, which, after deducting its commission and taxes, remitted one-half the balance to the taxpayer and one-half to his wife.

On July 23, 1941, the agent sold to Hearst's International Cosmopolitan Magazine for \$2,000 all American and Canadian serial rights in an article entitled "My Years Behind Barbed Wire" written by the taxpayer; and on August 12, 1941, the agent sold to the Curtis Publishing Company the rights in "Money in the Bank" for \$40,000. The rights in this novel were purchased subject to the same agreement to reassign as in the case of "The Cow-Creamer" and "Uncle Fred in the Springtime."

The Commissioner took the view that the payments above described constituted income of the taxpayer in 1938 and 1941 under Section 211(a)(1)(A) of the Internal Revenue Code, 26 U. S. C. A. §211(a)(1)(A), and assessed deficiencies accordingly. Section 211(a)(1)(A) provides that in the case of a non-resident alien not engaged in trade or business within the United States, there shall be imposed a tax upon amounts received within the United States as "interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, *or other fixed or determinable annual or periodical gains, profits and income* \* \* \* ." (Italics supplied) The Tax Court sustained the Commissioner's determination.

The taxpayer contends to the contrary—that the monies received in 1938 and 1941 did not fall within the purview of Section 211(a)(1)(A), first, because they were received from persons in payment for personal property sold by him, and second, because the payments were not made in annual or periodical amounts as described in the statute, but in each instance were made in a lump sum.

The point at issue will be more clearly understood by taking account of certain amendments to the statute which were enacted in 1936. Prior to that year the taxable gross income of non-resident aliens included gross income from all sources within the United States; and a part of this income, corresponding, with the exception of dividends, to that described in Section 211(a)(1)(A) quoted



above, was subject to a withholding tax. See 26 U. S. C. A. (1934 Ed.) §211(a) as defined in Section 119(a); and Section 143(b). In 1936 Section 143(b) was amended so as to add dividends to the categories of income subject to the withholding tax; and Section 211(a) was amended so that in the case of a non-resident alien not engaged in trade or business in the United States, the income tax was limited to the same categories of income to which the withholding tax applied. The effect of these amendments was (1) to exclude from the tax all gains received by such aliens from the sale of real or personal property located in the United States which theretofore had been taxable, and (2) to include dividends in the categories of taxable income.

The reasons for the changes in the statute were set out in the report of the Senate Finance Committee (S. Rep. No. 2156, 74th Cong., 2d Sess., p. 21) as follows:

"In Section 211(a) it is proposed that the tax on a non-resident alien not engaged in a trade or business in the United States and not having an office or place of business therein, shall be at the rate of 10 percent on his income from interest, dividends, rents, wages, and salaries and other fixed and determinable income, with no allowance for the deductions from gross income and credits against net income allowed to individuals subject to normal tax and surtax on net income. \* \* \* This flat tax (in the usual case) is collected at the source by withholding as provided for in section 143. Such a non-resident alien will not be subject to the tax on capital gains, including so-called gains from hedging transactions, as at present, it having been found administratively impossible effectually to collect this latter tax. It is believed this exemption from tax will result in considerable additional revenue from the transfer taxes and from the income tax in the case of persons carrying on the brokerage business. The principal increase in revenue will result, however, from withholding tax on dividends heretofore not required."

See also the Committee Report in the House of Representatives, (H. Rep. No. 2475, 74th Cong., 2d Sess., p. 9).

Both of the defenses offered by the taxpayer were rejected by the court in *Rohmer v. Commissioner*, 2 Cir., 153 F. 2d 61, in a decision involving similar facts; but after careful consideration, we find ourselves unable to adopt that court's conclusions. In that case a non-resident author received lump sum payments for the American and Canadian magazine and newspaper serial and radio rights to one of his stories, with authority to copyright the story, but the taxpayer retained the book, motion picture and stage production rights of the story. The court held that there was no sale of



personal property" because (p. 63): "Where a copyright owner transfers to any particular transferee substantially less than the entire 'bundle of rights' conferred by the copyright, then payment therefor, whether in one sum or in several payments, constitutes royalties within the meaning of §211(a)(1)(A). For such a transfer is the grant of a license." This holding, as the authorities cited show, is based on the notion that a copyright is an indivisible property which cannot be split up into the parts of which it is composed, and that any attempt to do so does not amount to the transfer of separate properties to the several assignees but merely to grants of licenses. The language of some of the decisions gives seeming support to this idea; but when the exact point in controversy in these cases is ascertained, it will be seen that the courts were concerned with procedural matters and did not undertake to controvert the undeniable fact that serial rights, book rights, dramatic production rights and motion picture rights of a literary production are property rights which may be and are separately and effectively bought and sold in the literary market. The courts, however, did point out that the terms of the statute with regard to the assignment and protection of copyrights, see 17 U. S. C. A. §§28, 101, 112, require the holding that only the owner of a copyright may sue for its infringement because otherwise a wrongdoer might be subject to more than one recovery for the redress of one wrong since he might be subject to successive suits by different persons holding different parts of the corporate property.<sup>1</sup>

The authorities cited in *Rohmer v. Commissioner*, *supra*, on the indivisibility of the copyright do not show that there is anything inherent in the nature of a copyright which renders impossible the separate sales of the several parts which comprise the whole.<sup>2</sup> For

<sup>1</sup> That this is the true meaning and limitation of the rule is shown by an examination of the authorities cited in *Rohmer v. Commissioner*, *supra*, and in other decisions. The earliest expression of the rule appears in certain dicta of Lord St. Leonards in *Jefferys v. Boosey*, 4 H. L. 815, 993, in 1854. See also *I. T. 2735*, XII-2, Cum. Bull. p. 131 (1933). *Keene v. Wheatley*, C. C. Pa., 14 Fed. Cases No. 7644, pp. 180, 186; *Black v. Henry G. Allen Co.*, C. C. N. Y., 42 F. 618, 621; *Empire City Amusement Co. v. Wilton*, C. C. Mass., 134 F. 132; *New Fiction Publishing Co. v. Star Co.*, D. C. N. Y., 220 F. 994; *Goldwyn Pictures Corp. v. Howells Sales Co.*, 2 Cir., 282 F. 9; *Witmark v. Pastime Amusement Co.*, D. C. N. C. 298 F. 470, *aff'd*, 2 F. 2d 1020. It may be noted that this view has not been unanimous. Thus, in *Roberts v. Myers*, C. C. Mass., 20 Fed. Cases No. 11906, p. 898, it was expressly stated that a copyright was divisible, and in *Ford v. Blaney Amusement Co.*, C. C. N. Y., 148 F. 642, *Fitch v. Young*, D. C. N. Y., 230 F. 742, and *Public Ledger Co. v. New York Times*, D. C. N. Y., 275 F. 562, *aff'd*, 279 F. 747, it was held that a copyright was divisible to the extent that the statute, by categorization, recognized separate or distinguishable rights comprising the copyright. See 17 U. S. C. A. §1.

<sup>2</sup> The final decision on the point in the Second Circuit has not been reached without difficulty. Thus in *Sabatini v. Commissioner*, 2 Cir., 98 F. 2d 753, the court held that the grant of exclusive world wide motion picture rights for ten years of a book by a nonresident alien author for a substantial lump sum

example, in *New Fiction Pub. Co. v. Star Co.*, D. C. S. D. N. Y., 220 F. 997, which was cited with approval in *Goldwyn Pictures Corp. v. Howells-Sales Co.*, 2 Cir., 282 F. 9, and also in *Rohmer v. Commissioner*, *supra*, the court relied upon the following quotation from Bowker on Copyrights, Its History and Its Law, Ed. 1912, p. 49, as follows:

"There can be no such thing as a copyright for a special purpose, or for a special locality, or under other special conditions, for there can be only one copyright, and that a general copyright, in any one work. But specific contracts can be made, enforceable under the law of contracts, *as for the sale of a copyrighted book within a certain territory*, provided such contracts or limitations are not contrary to other laws. Although record of assignment in the Copyright Office is provided for by the law only for the copyright in general, the separate estates, as a right to publish in a periodical and the right to publish as a book, *may be sold and assigned separately*, and the special assignment recorded in the Copyright Office, though this does not convey a right to substitute in the copyright notice a name other than that of the recorded proprietor of the general copyright, which can only be changed as specifically provided in the law under recorded assignment of the entire copyright." (Italics supplied)

The courts have been repeatedly admonished that in matters of taxation they should be governed by the substance rather than the form of a transaction and should not be diverted from the realities by undue consideration of the technical refinements of title to property. *Helvering v. Hallock*, 309 U. S. 106, 116-8; *Griffith v. Commissioner*, 308 U. S. 355, 357; *Klein v. United States*, 283 U. S. 231, 234; *Corliss v. Bowers*, 281 U. S. 376, 378. Congress has declared that the gains of non-resident aliens from the sale of real and personal property shall not be taxed; and it seems to us that the will of Congress is frustrated when that which is generally recognized in the commercial exploitation of literary works as a sale is subjected to the incidence of the tax under a different name. The inconsistency of such an assessment becomes entirely clear in this case in view of the concession that if the taxpayer had sold his entire property in his work for a money consideration, and had made an assignment of his whole copyright, he would have received no taxable income.

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was not a sale but a license; but in *Goldsmith v. Commissioner*, 2 Cir., 143 F. 2d 466, the majority of the court held that a grant of exclusive motion picture rights of a play was a sale; and in *General Aniline & Film Corp. v. Commissioner*, 2 Cir., 139 F. 2d 759, the court held that the assignment of a partial interest in a patent was a sale and not a license. To the same effect as the decision in the last mentioned case was the holding in *Commissioner v. Celanese Corp.*, App. D. C., 140 F. 2d 339.

We cannot suppose that Congress intended to exempt the proceeds of a single sale of all the rights in a literary production to one person, but to tax the proceeds of separate sales or parts of the whole.

The technical and unsubstantial nature of the opposite view is finally shown by the disappearance of any practical difficulty in the transfer and protection of the various rights in a literary work when they are separately assigned. That was accomplished in the instant case by the transfer of the right to copyright the stories to the Curtis Publishing Company under an agreement to reassign to the author all except the serial rights after the serial publication had been completed. This transfer would seem a sufficient answer to the Commissioner's contention if technicalities of title alone are considered,<sup>3</sup> since there is no reason to believe that the transfer was made in this form in order to avoid taxation. Our decision, however, does not rest on this basis. It rests on the inherent nature of the transfer, and on the further fact that the only ground for the indivisible theory, (that is, the inability of the assignee of a part of a copyright to sue for infringement), has been swept away by the decision of the Supreme Court in *Independent Wireless Co. v. Radio Corp. of America*, 269 U. S. 459. It was there held that an exclusive licensee of certain rights under a patent, in a suit for the infringement of those rights, may join the owner of the patent as a codefendant if he is within the jurisdiction of the court, or as an involuntary coplaintiff if he is without the jurisdiction of the court and has refused to prosecute the suit. It has been held in the Second Circuit that this holding is applicable in the field of copyright law. See *Stephens v. Howells Sales Co.*, D. C. N. Y., 16 F. 2d 805; *L. C. Page & Co. v. Fox Film Corp.*, 2 Cir., 83 F. 2d 196; and the same rule has been incorporated in the Federal Rules of Civil Procedure, Rule 19(a) and notes of the Advisory Committee thereto.

In addition to and apart from the conclusion that the lump sum payments received by the author were exempt from taxation since they constituted the proceeds of the sales of personal property, we are satisfied that they do not come within the positive terms of the taxing statute, Section 211(a)(1)(A), because they do not answer to the description "annual or periodical gains." This seems immediately obvious since the payment of a single sum for a right or privilege can hardly be said to be annual or periodical. The several kinds of income listed in the statute do not expressly include

<sup>3</sup> This conclusion was reached in *Elliot v. Geare-Marston, Inc.*, E. D. Pa., 30 F. Supp. 301, wherein was held, with reference to a similar Curtis contract, that Curtis became the owner of the copyright and that the effect of the reassignment was to constitute the author an exclusive licensee of all rights other than the reserved serial rights.

royalties; but Section 119(a) (4) of the Internal Revenue Code as it existed both before and after the 1936 amendments provided that gross income from sources within the United States shall include royalties for the use of copyrights in the United States. Moreover, as pointed out in *Rohmer v. Commissioner, supra*, the Revenue Acts from 1918 until 1936 inclusive contained a provision substantially like the present section 143(b) of the Internal Revenue Code and the regulations interpreting this section have declared that certain kinds of income, other than those specifically listed, such as royalties, are included in the tax. See Regulations 101, Article 143-2; Article 211-7; Regulations 103, Section 19, 143-2, 3; Section 19, 211-7. Hence it is reasonable to conclude that Congress intended Section 211(a) (1) (A), as enacted in 1936, to include royalties.

The regulations, however, specify that only annual or periodical income is taxable. For example, Treasury Regulations 101, Article 143-2, promulgated under the Revenue Act of 1938, provide as follows:

"Only fixed or determinable annual or periodical income is subject to withholding. The Act (Internal Revenue Code) specifically includes in such income, interest, dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations and emoluments. But other kinds of income are included, as, for instance, royalties.

Income is fixed when it is to be paid in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained. The income need not be paid annually if it is paid periodically; that is to say, from time to time, whether or not at regular intervals. That the length of time during which the payments are to be made may be increased or diminished in accordance with someone's will or with the happening of an event does not make the payments any the less determinable or periodical. \* \* \* The income derived from the sale in the United States of property, whether real or personal, is not fixed or determinable annual or periodical income."

The answer given in *Rohmer v. Commissioner, supra*, to this phase of the case is twofold. First, it is said that a royalty which is often or usually paid in installments is no less a royalty when it is disbursed in a single amount; and that the phrase "annual or periodical" is descriptive of the nature or type of income regardless of the actual manner of payment. The obvious flaw in this statement is that it ignores the plain meaning of the statutory terms. The section does not tax all payments or all royalties but only those which are "fixed or determinable annual or periodical gains"; and



it is only by excising from the Act the words "annual or periodical" that the conclusion stated by the court can be reached. Indeed, that is precisely what the court does for it says in so many words, (p. 64): "that Congress intended the words 'other fixed or determinable annual or periodical gains, profits and income' to be interpreted to mean 'other fixed and determinable income.'" It seems to us that this amounts to an amendment of the Act which the court is powerless to make.<sup>4</sup>

The second answer of the court on this branch of the case is based upon statements in the Congressional Committee Reports with reference to the 1936 amendments wherein it was said that the tax on capital gains of aliens was excluded because it was found impossible effectually to collect it, and because it was believed the amendment would be productive of substantial amounts of additional revenue since it replaced a theoretical system impractical of administration in a great number of cases. Since the payment of a lump sum for a copyright privilege is not at all impossible to collect effectively, and since Congress sought substantial amounts of revenue by the taxation of non-resident aliens, the court concluded that lump sum payments to non-resident aliens for copyright privileges were included within the statute. The argument obviously proves too much for it would lead to the conclusion, which the regulations expressly preclude, that capital gains from the sale of real estate, which could be as easily ascertained and collected as the gains from the sale of literary property, are subject to tax. Moreover, the report of the Senate Committee hereinbefore set out makes quite clear the difficulty that the taxing authorities had previously experienced and the manner in which the losses incurred by excluding gains from the sale of real and personal property were to be made up. The report showed that the tax on capital gains, including so-called gains from hedging transactions, were to be excluded since it had been found impossible effectually to collect the tax, but that it was believed that this exemption would result in considerable additional revenue from the transfer taxes and from the income tax on persons carrying on the brokerage business, but principally from the withholding tax on dividends which for the first time were included within the purview of the statute. It is not the province of the court to impose a tax upon an item of income which Congress has considered but decided not to tax.

<sup>4</sup> It is not meant to say that a lump sum payment is never subject to taxation under the statute. For example, it was held in *Commissioner v. Raphael*, 9 Cir., 133 F. 2d 442, that interest on a judgment which was paid in a lump sum was taxable under the section because the gain involved was periodical but such a ruling can have no bearing upon a single payment which is in no way related to the period in which the right is exercised or to the contingency of subsequent performance.



A passing reference was made in the arguments in the pending case to the fact that the Committee Reports with reference to the 1936 Amendments referred in general terms to fixed and determinable income without using the entire phrase "fixed or determinable annual or periodical income"; and from this omission it was contended that the words should be interpreted as they were found in the Committee Reports rather than in the way in which they were used in the statute. It is sufficient to say that we know of no authority for the substitution of the language of a Committee Report for that of the statute to which it relates.

Since we have reached the conclusion that the payments received by the taxpayer were not taxable at all, we have no occasion to consider the question whether the Commissioner should have taxed less than the total amount received from the Curtis Publishing Company which covered publication rights not only in the United States but also in Canada. Nor have we occasion to consider the question whether the taxpayer could reduce his taxable income by transferring to his wife a share of the proceeds from the sale of his literary productions before publication.

Reversed.

DOBIE, Circuit Judge, dissenting: I dissent. On the authority and reasoning of *Rohmer v. Commissioner*, 153 F. (2d) 61, I think the decision of the Tax Court of the United States should be affirmed.

United States Circuit Court of Appeals, Fourth Circuit

No. 5694

PELHAM G. WODEHOUSE, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

*Judgment*

Filed and Entered March 16, 1948.

On petition to review the decision of the Tax Court of the United States.

This cause came on to be heard on the transcript of the record from the Tax Court of the United States, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the decision of the said the Tax Court of the United States, in this cause, be, and the same is hereby reversed;

and that this cause be, and the same is hereby; remanded to the Tax Court of the United States for further proceedings in accordance with the opinion of the Court filed herein. >

MORRIS A. SOPER,  
U. S. Circuit Judge.

MARCH 16, 1948.

On another day, to-wit, April 16, 1948, the mandate of this Court, in this cause, is issued and transmitted to the Tax Court of the United States at Washington, D. C., in due form.

*Clerk's Certificate*

UNITED STATES OF AMERICA,  
Fourth Circuit, ss:

I, Claude M. Dean, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the appendix to brief of petitioner, and the proceedings in the said Circuit Court of Appeals in the therein entitled cause, as the same remain upon the records and files of the said Circuit Court of Appeals, and constitute and is a true transcript of the record and proceedings in the said Circuit Court of Appeals in said cause, made up in accordance with the request of the Solicitor General of the United States, for use in the Supreme Court of the United States on application for a writ of certiorari.

In testimony whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit at Richmond, Virginia, this 8th day of May, A. D., 1948.

[SEAL]

[S.] CLAUDE M. DEAN, Clerk,  
U. S. Circuit Court of Appeals, Fourth Circuit.

**Supreme Court of the United States*****Order allowing certiorari.*****(Filed October 11, 1948)**

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.